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IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, GQEBERHA)

CASE NO: 1552/2025

In the matter between:

DAVID JOHN MASTERTON N.O.

First Applicant

QUINTON PATTINSON N.O.

Second Applicant

And

KIRAN MOODLEY

First Respondent

BLUE CRANE ORGANICS (PTY) LTD

REG NO: 2024/578906/07

Second Respondent

**ALL AFFECTED PARTIES
(PER ANNEXURE "DM-4")**

Third Respondents

NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE that Applicants intends to make application to this Honourable Court for an Order in the following terms:

1. That the First Respondent be removed as a director of Proximitas Investments 60 (Pty) Ltd, Reg No: 2001/012801/07 in terms of Section 137(5) of the Companies Act 71 of 2008
2. That the First Respondent be declared a delinquent director in terms of Section 162 of the Companies Act 71 of 2008

3. That the First Respondent be ordered to pay the costs of this application
4. Further and/or alternative relief.

BE PLEASED TO TAKE NOTICE FURTHER that the Affidavits of DAVID MASTERTON and QUINTON PATTINSON, together with annexures attached thereto, will be used in support hereof.

TAKE NOTICE FURTHER that Applicants have appointed the offices of BESTERS ATTORNEYS of 50A Pickering Street, Newton Park, Gqeberha at which address it will accept notices and service of all process in these proceedings.

TAKE NOTICE FURTHER that if Respondents intend opposing this application, Respondents are required:

- a) to notify Applicants' attorneys in writing on or before 16 MAY 2025; and
- b) within 15 (fifteen) days after Respondents have so given notice of its intention to oppose the application, to file its answering affidavits, if any, and further that Respondents are required to appoint in such notification an address referred to in Rule 6(5)(b) of the Uniform Rules of Court at which Respondents will accept notice and service of all documents in these proceedings.

If no such notice of intention to oppose be given, the application will be made on 27 MAY 2025 at 09h30 or as soon thereafter as counsel may be heard.

DATED at GQEBERHA on this the 24th day of APRIL 2025


BESTERS ATTORNEYS
Attorneys for Applicants

50A Pickering Street

Newton Park

GQEBERHA

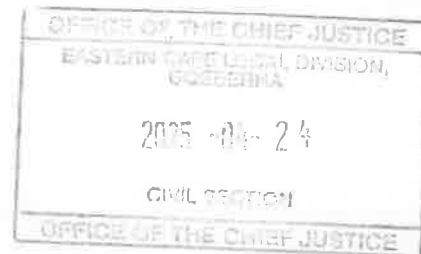
Ref : P Bester

Tel: 041-585 2200

Email: paul@besters.biz

debbie@besters.biz

TO : The Registrar
High Court
GQEBERHA



AND TO: **KIRAN MOODLEY**
First Respondent

AND TO: **BLUE CRANE ORGANICS (PTY) LTD**
Second Respondent

AND TO: **ALL AFFECTED PARTIES AS PER ANNEXURE "DM-4"**
Third Respondents

AND TO: COMPANIES AND INTELLECTUAL PROPERTY
COMMISSION (CIPC)

IN THE HIGH COURT OF SOUTH AFRICA
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And

KIRAN MOODLEY

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BLUE CRANE ORGANICS (PTY) LTD

Second Respondent

REG NO: 2024/578906/07

ALL AFFECTED PARTIES

Third Respondents

(PER ANNEXURE "DM-4")

FOUNDING AFFIDAVIT

I, the undersigned

DAVID MASTERTON

do hereby make oath and state that:

[Handwritten signature]

1.

I am an adult male Experienced Business Rescue Practitioner practising as such under the name and style of BR360 (Pty) Ltd from Building 5 Waterfront Business Park, 9 Pommern Street, Humeral, Gqeberha.

2.

The facts contained herein are within my personal knowledge unless otherwise stated or apparent from the context and are both true and correct. Where such facts are not within my personal knowledge, I verily believe them to be true and correct.

3.

I am the First Applicant herein in my capacity as duly appointed rescue practitioner of Proximitas Investments 60 (Pty) Ltd, a private company with limited liability duly incorporated in terms of the laws of the Republic of South Africa with registration number 2001/012801/07.



4.

The Second Applicant is Quinton Pattinson, an adult Senior Business Rescue Practitioner whose office is also situate at Building 5 Waterfront Business Park, 9 Pommern Street, Humeral, Gqeberha. He is the Second Applicant in his capacity as duly appointed rescue practitioner of Proximitas Investments 60 (Pty) Ltd.

5.

I shall for ease of reference refer to the Applicants hereinafter as "the BRP's" for the reasons as set out hereunder. I shall refer to Proximitas Investments 60 (Pty) Ltd as "Proximitas".

6.

I attach hereto as Annexure "DM-1" a copy of the COR123.2 issued by the Companies Intellectual Property Commission (CIPC) in confirmation of Applicants' appointment as rescue practitioners of Proximitas.

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7.

The First Respondent is KIRAN MOODLEY, an adult male with identity number 890910 5107 08 4 resident at 8 Burton Drive, Vanes Estate, Kariega, Eastern Cape. The First Respondent is the sole director of Proximitas.

8.

The Second Respondent is BLUE CRANE ORGANICS (PTY) LTD, a private company with limited liability duly incorporated in terms of the laws of the Republic of South Africa with registration number 2024/578906/07 and whose registered head office address is also situate at 8 Burton Drive, Vanes Estate, Kariega. The Second Respondent is cited herein as sole shareholder of Proximitas. No relief is sought against the Second Respondent. The First Respondent is the sole director of the Second Respondent. A true copy of a CIPC certificate reflecting the status of the Second Respondent is attached hereto as Annexure "DM-2". I also attach hereto Share Certificate No. 5 issued in favour of the Second Respondent in respect of Proximitas as Annexure "DM-3".

9.

The Third Respondents are all the affected parties to the rescue proceedings who have an interest therein and are entitled in terms of Section 145(1)(a) to be notified of all legal proceedings.



No relief is sought against any affected party. They are listed in Annexure "DM-4" hereto. I shall instruct the Applicants' attorney of record to transmit a copy of this application to those parties per email as provided for in the Companies Act 71 of 2008 (hereinafter referred to as "the Act") .

10.

Nature of relief sought

This is an application in terms of Section 137(5) and Section 162 of the Companies Act 71 of 2008 for the immediate suspension and removal of the First Respondent as director of Proximitas Investments 60 (Pty) Ltd and a declaration of delinquency on the basis that:

- 10.1 the First Respondent has a conflict of interest in his capacity as director of Proximitas and his other business interests more fully set out hereunder
- 10.2 the First Respondent is impeding and frustrating the BRP's in the execution of their duties,
- 10.3 more particularly and recently, the First Respondent is preventing the implementation of an adopted business rescue plan of Proximitas

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- 10.4 knowingly caused harm to the company of which he is a director
- 10.5 has not acted in good faith
- 10.6 Purported to act on behalf of Proximitas without a mandate or consent of the BRP's and causing harm and financial loss to Proximitas
- 10.7 Refuses to provide the BRP's with vital information when required to do so
- 10.8 Refuses to follow the instructions of the BRP's
- 10.9 Acted grossly negligent in the execution of his duties
- 10.10 Wilfully acted to the detriment of the company of which he is a director for his own benefit

11.

Background

The Applicants are the duly appointed business rescue practitioners of a limited liability company, Proximitas Investments 60 (Pty) Ltd with registration number 2001/012801/07, duly incorporated in terms of the laws of the Republic of South Africa and whom has its registered address at Kanaalplaas, Nqweba, hereinafter referred to as "Proximitas".



The Applicants were appointed as BRP's on the 29th of November 2023 and I have already attached hereto as Annexure "DM-1", a true copy of the notice as issued by the Companies and Intellectual Property Commission (CIPC).

12.

The BRP's were approached by Mrs Marike Swart, an erstwhile director of Proximitas, and when deciding to accept the appointment as rescue practitioners, they were engaged by Mrs Marike Swart and her brother Johann Swart to assist with the turnaround of the entire farming portfolio of which Proximitas is only one of several entities. They were accompanied by their auditor Mr Fanie Strydom as well as their attorney, Mr Dawid le Roux. The farming portfolio known as the Blackie Swart Group consisted of:

- 12.1 The Blackie Swart Family Trust, a trust duly incorporated in terms of the Trust Property Control Act 1988 with registration number IT390/2004. At the time of engagement in the rescue proceedings, the trustees were Mrs Marike Swart, Mr Johann Swart and Mr Fanie Strydom who is and was at all relevant times the accountant of the group (hereinafter referred to as "BSFT"). It was at the time of deposing to this affidavit placed in provisional sequestration. Provisional trustees have been appointed by the Master of the High Court. The BSFT was the sole shareholder of Proximitas until the appearance of the First and Second Respondent.

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- 12.2 Proximitas Investments 60 (Pty) Ltd with registration number 2001/012801/07 (hereinafter referred to as "Proximitas")
- 12.3 Tracto Trading 100 CC, a close corporation duly incorporated in terms of the laws of the Republic of South Africa with registration number 2011/077156/23 (hereinafter referred to as "Tracto")
- 12.4 Steenbokvlakte Ontwikkeling (Pty) Ltd, a private company duly incorporated in terms of the laws of the Republic of South Africa with registration number 2017/318606/07 (hereinafter referred to as "Steenbokvlakte")
- 12.5 Blue Crane Exports CC, a close corporation duly incorporated in terms of the laws of the Republic of South Africa with registration number 2011/060809/23 (hereinafter referred to as "Blue Crane", and not to be confused with Blue Crane Organics (Pty) Ltd, the current shareholder of Proximitas, the Second Respondent herein)

13.

I shall again for ease of reference refer to all the entities supra as "the group" when applicable.

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14.

The companies and close corporations which were capable of submitting to business rescue proceedings, duly did so and in that respect, the Applicants were appointed as the business rescue practitioners for Proximitas and Blue Crane Exports and Mr Pattinson was appointed with Mr Jaco Durandt, a junior practitioner in respect Steenbokvlakte Sitrus Ontwikkeling (Pty) Ltd and Tracto Trading 100 CC.

15.

From the outset all the parties were advised that the Blackie Swart Familie Trust is not capable of submitting to business rescue proceedings as the legal status of a Trust does not fall within the definitions and provisions of the Companies Act 71 of 2008. For the reasons set out hereunder it was however an integral part of any turnaround strategy of the group.

16.

The Applicants soon found that the businesses of the companies and trust was so interlinked and intertwined that one could not approach any turnaround strategy on each individual company and the Trust separately in that:

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16.1 It appeared that all the employees from top management to farm workers were employed by the BSFT despite working on other farms of the group

16.2 There was a complete lack of corporate governance in that:

16.2.1 Each entity could not produce its own definitive asset register nor was it provided in any acceptable form despite numerous requests for it to be provided. When eventually provided, it turned out to be inaccurate and nonsensical. Under the listed assets were for example names of persons with no detail of why it constitutes an asset;

16.2.2 Apart from conducting deed searches in respect of immovable assets and ENatis searches in respect of vehicles, the BRP's could not determine who owns which movable assets. Such searches did in any event not match the details in the annual financial statements;

16.2.3 Farm equipment appears to be used interchangeably between the various citrus farms owned by the group as and when required with little or no record of who purchased it and to whom it belongs;

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16.2.4 Costs and expenses were paid as and when needed from such entities where there were funds available with disregard who the real debtor is;

16.2.5 The financial information provided to the BRP's did not match in that for example loan accounts reflected as a collectable debt in one set of financials would not be mirrored as a reciprocal payable debt in the other entity's annual financial statements;

16.2.6 They for no reason bound the companies as sureties for debts of other companies within the group when such entity required loans or for funding its operations;

16.2.7 All the staff of the entire group was employed by the Trust.

17.

In order for the BRP's to be able to deal with the BSFT in the rescue proceedings, the First Applicant considered becoming a trustee thereof. He decided against it as information was discovered of possible mismanagement, tax evasion and manipulation of financials and fraud.

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In the premises it was decided that First Applicant would at all relevant times act by way of a power of attorney, which was granted to him by the then trustees on the 19th of January 2024. As it transpired it did become necessary to report and disclose transactions and information to SARS.

18.

When the BRP's discovered and exposed highly questionable transactions, the trustees and directors of the company were confronted with the information. In compliance with their obligations the BRP's were compelled to report to the relevant authorities. That unfortunately lead to the deterioration of the relationship with the Swart family to the extent that particularly Mrs Marika Swart started hopping from the one attorney to the other to represent her. She was initially represented by Mr Dawid le Roux, then Mrs Rihanda Strydom, thereafter two partners at the firm Joubert Galpin Searle and apparently now by the First Respondent's previous attorney, Mr Tiaan van Schalkwyk. I say "previous" attorney for the reasons set out below. I shall deal with the relationship as between First Respondent and his attorney hereunder.

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19.

I shall if called upon to elaborate on the mismanagement and potential fraud discovered, but respectfully submit that apart from sketching the background to the current application, it is irrelevant to the conduct of the First Respondent. The mandate of Mr Masterton to act for and on behalf of the trust was terminated on 22 July 2024 when JGS Attorneys came on record for the BSFT. The First Respondent has however been fully aware of the BRP's difficulties and undertook to assist them to obtain information when he became a director. For obvious reasons this development created difficulties for the Applicants in that the Trust's resources became unavailable such as for example the entire group's staff is employed by the Trust as set out in paragraph 16.2.7.

20.

It was discovered that Blue Crane CC (in rescue) had no assets of any significant value and debts of approximately R40 million. The BRPs thus resolved to place Blue Crane in liquidation in terms of Section 141(2) as there was no prospect of a successful rescue and it has been finally liquidated. The decision was made in conjunction with the partners of JGS representing the BSFT at the time and Mrs Marike Swart, the member of the Close Corporation also being represented by JGS Attorneys.

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The further motivating reason for placing Blue Crane CC in liquidation was that liquidators could be appointed to investigate the affairs of Blue Crane and more particularly what had happened to the funds thereof and citrus produce delivered to it. Liquidators have powers to subpoena information in terms of the relevant legislation, which BRP's do not. I understand that the first creditors meeting has been convened and that the major creditor demands an inquiry into the affairs of Blue Crane.

21.

BSFT Sequestration application : Makhandia High Court Case no: 526/2024

During February 2024 one of the creditors of the Blackie Swart Familie Trust, MPACT, launched proceedings for its sequestration and which provisional sequestration order was, despite being opposed, granted on the 30th of January 2025. It is this application and the application for the postponement thereof that created conflict between the Applicants and the First Respondent when First Respondent's attorney, Van Schalkwyk, threatened to throw the BRP's under the proverbial "bus" and which I shall elaborate on hereunder. Up to this time the BRP's and First Respondent had worked together, importantly in the drafting and the eventual adoption of the rescue plan.

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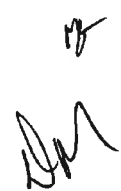
Mpact Operations (Pty) Ltd commenced with the sequestration proceedings against the BSFT on or about the 8th of February 2024. I do not intend to attach the entire application, opposing papers and record of the application to this proceedings as it is unlikely that any of the factual averments contained herein will be disputed and it will also with respect, unnecessarily burden this Honourable Court with irrelevant information. I shall however make same available at the hearing of the application and will only refer to relevant issues.

23

In essence the application was launched on the basis that Mrs Marike Swart had given undertakings to the creditor that its debt would be settled from the proceeds of the sale of certain farms. This undertaking is contained in the email of Mrs Marike Swart dated the 9th of November 2023 and attached as "FA36" to Mpact's application for the sequestration of the Trust. This was prior to the BRP's involvement in the affairs of the Blackie Swart Group.

24.

The eventual sale of the property was dealt with by Le Roux Incorporated who provided a detailed statement of how the proceeds of the sale was to be utilised.



The individual at the firm dealing with the matter at the time, Mr Dawid le Roux, has confirmed with me that he was unaware of any undertaking given to Mpact to pay the debt from the proceeds of the sale. In the premises the proceeds were distributed as agreed between the parties to the exclusion of MPACT. MPACT was going to be addressed in the turnaround strategy. The Applicants were also unaware of any undertaking.

25.

Due to the fact that MPACT was not paid from the proceeds of the sale, as promised by Mrs Swart, they alleged that the funds of the BSFT were utilised for other purposes other than paying creditors and launched the sequestration proceedings. Based on legal advice received at the time, the First Applicant opposed the application although he did not think there to be any merits therein as the Trust was on a knife point in respect of its actual solvency but it was most definitely commercially insolvent and unable to pay its debts as and when they were due. On the advice of attorney Le Roux who acted for the Trust and the Swart family, opposing papers were filed and First Applicant deposed to an opposing affidavit on behalf of the BSFT, supported by the other Trustees.

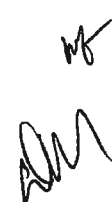
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26.

Of relevance for the purposes of this application is the fact that attorney Van Schalkwyk eventually came on record for and on behalf of the BSFT and despite being intimately involved in the affairs thereof as well as the rescue process, approached the BRP's on or about 13 January 2025 seeking assistance to obtain a postponement of the sequestration application of the Trust and to discuss the business rescue proceedings of Proximitas and *inter alia* required information regarding the debatement of Le Roux Incorporated. He stated in no uncertain terms that either the BRP's or attorney Le Roux will have to be thrown under the bus to obtain a postponement of the sequestration proceedings. First Applicant's mandate to act for BSFT was at that time terminated six months before. Van Schalkwyk's approach and threats came as a complete surprise as First Respondent had just days prior thereto written to the bank, the largest creditor, informing them of the collaboration with the BRP's. This correspondence is attached hereto As Annexure "DM-5". It also includes the response of the bankers. The letter commences on the third page.

27.

The First Respondent also acting on a power of attorney on behalf of the BSFT launched an application to postpone the sequestration proceedings set down for 30 January 2025 making false and defamatory allegations in respect of the



BRP's conduct and accused them of mismanagement, perjury and downright theft. This led to the immediate deterioration of the relationship between the BRP's and the First Respondent. He did so with the clear intent to protect the BSFT and his interest in acquiring the farms of the Trust with that of Proximitas. In order to do so the sequestration of the BSFT had to be prevented. This in itself creates a conflict of interest between his directorship of Proximitas and advancing the affairs of the BSFT and his personal interest. This is evident from the content of Annexure "DM-5".

28.

The First Respondent *inter alia* alleged that First Applicant had not disclosed the large debt owed to Absa by the BSFT to attorneys Le Roux who had according to the affidavit of the First Respondent confirmed so under oath. It transpired that Le Roux never deposed to a confirmatory affidavit and I believe an unsigned copy was presented to court. Le Roux in any event was fully aware of the Absa debt.

29.

The First Applicant was compelled to set the record straight and depose to an affidavit denying the allegations. At all relevant times there has been full transparency and cooperation with all affected parties.



Had the Applicants' attorneys in that matter not notified the BRP's, the false allegations would have gone unchallenged.

30.

I attach hereto in respect of the abovementioned postponement application, the following:

30.1 Annexure "DM-6", the Notice of Acting filed by attorney Van Schalkwyk

30.2 As Annexure "DM-7", the application for the postponement of the sequestration of the BSFT

30.3 As Annexure "DM-8", the First Applicant's (my) supplementary affidavit

31.

From the content of the annexures the Honourable Court will note that:

31.1 Attorney Van Schalkwyk acted for the BSFT on the instructions of the First Respondent herein (vide Annexure DM-6 as read with paragraph 3 of Moodley's Affidavit (DM-7))

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31.2 The First Respondent (Moodley) accuses the BRP's of and alleges that the BRP's are:

31.2.1 Not acting diligently (par. 10)

31.2.2 Not acting honestly (par. 10)

31.2.3 Withheld relevant facts from court (par. 11)

31.2.4 Acting in self-interest (par. 12)

31.2.5 Failing to pay the fees of JGS Attorneys during September 2024 despite the fact that First Applicant's mandate was terminated in July 2024 and that is the reason they withdrew as attorneys of record

31.2.6 That First Applicant was in charge of the finances of BSFT which is false and perjurious (par. 15)

31.2.7 Le Roux formally withdrew on 3 December (par. 16) but fails to disclose that Le Roux's mandate was formally terminated when Maryke Swart engaged attorney Rihanda Strydom on or about 11 March 2024. Le Roux's withdrawal was a mere formality for Van Schalkwyk to come on record

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31.2.8 Using the BSFT for personal gain (par. 35)

31.2.9 That First Applicant was untruthful (par. 37)

31.2.10 That Masterton tainted and compromised the BSFT's case (par. 42)

32.

For this reason First Applicant was compelled to depose to a supplementary affidavit to deal with the defamatory and false allegations (Annexure DM-8). The First Applicant is not only a rescue practitioner but also a practising chartered accountant. The defamatory allegations were made in execution of Van Schalkwyk's threat to throw the BRP's under the bus.

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The result was that the application was dismissed and the Trust was provisionally sequestered.

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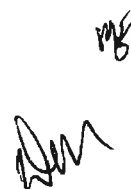
Rescue proceedings of other entities

In respect of Tracto Trading and Steenbokvlakte as well as Proximitas, business rescue plans were published and finally adopted. Both Tracto Trading and Steenbokvlakte's plans have been implemented and save for the eviction of occupants on property owned by Tracto Trading, only the administrative winding up of the entities and payment to creditors are outstanding. Proximitas, as will be seen hereunder, is however another matter.

35.

Respondents' involvement

During or about 22 July 2024 the firm JGS came on record for the Swart family and particularly the Blackie Swart Family Trust. I am informed that this was a process driven by the First Respondent. At that time business rescue plans had been prepared and published for all the entities and it is submitted the publication of these rescue plans, which entails the sale of certain of the farmland for profitability purposes, apparently did not sit well with the trustees of the trust. BSFT was at the time the sole shareholder of Proximitas. The sale of certain farms was in fact approved and suggested by Mrs Swart who must have had a change of heart.



36.

It was during this time that the First Respondent was introduced to the BRP's as an "angel investor" who either had or could raise sufficient funds to pay off most, if not all, of the debt of the various entities and would then be in ultimate control of the affairs of the group through his investment. This included the BSFT.

37.

Lengthy meetings were held with the First Respondent, JGS Attorneys, the Respondent's advisor Mr Dean Pillay as well as an agricultural economist, Mr Anton Scheepers brought aboard by the First Respondent who had with respect very grandiose ideas of how the business could be turned around. They insisted that the business rescue plans as published be withdrawn. They were under the misapprehension that no plan had to be formally published but could simply be "signed off" by the bank, the largest creditor. They initially informed the BRP's that their involvement was not necessary. It is only after the provisions of Chapter 6 of the Act was literally read out to them by the BRP's and their attorney of record, that their approach changed. The absolute lack of understanding of business rescue proceedings will become evident later.

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38.

Much time and effort was put into the preparation and production of a second rescue plan driven by First Respondent and his team, which was rejected outright by the creditors at a meeting scheduled for its adoption. The BRP's were instructed by the creditors to amend the proposed plan and republish a revised plan providing for the sale of its assets and a voluntary wind-down. This is in line with Section 128(b)(iii) as well as Section 7(k) and the Supreme Court of Appeals Judgment in the Oakdene Square Properties, Carroll and related cases.

39.

The Plan as adopted in terms of Section 152

Due to the rejection of the second proposal, the BRP's in conjunction with the First Respondent and his advisors, prepared the third business rescue plan of which the relevant portion is attached hereto as Annexure "DM-9". I shall in order not to make this application unnecessarily prolix, only attach the extract. The essence of the plan is summarised in paragraph 4.6. The Honourable Court will note that the business rescue plan effectively provided for the sale of all immovable assets of Proximitas either by one single purchaser or multiple buyers resulting in a wind-down of the company as it once existed. Three phases were envisaged in the business rescue plan which chronologically would follow the path as described hereunder:

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- 39.1 The first phase provided that a purchaser would be sought for the business and all of its assets, lock stock and barrel
- 39.2 Simultaneously with phase 1, phase 2 would be launched in terms whereof prospective buyers would be sought for the individual farms or group of farms should one single buyer not be secured
- 39.3 Any offers in terms of phase 1 would have to be secured and verified within 10 working days from the date of adoption of the business rescue plan (by 11 November 2024) and
- 39.4 any offers in terms of phase 2 should have to be secured and verified in 15 working days from date of adoption of the business rescue plan should phase 1 fail, thus by 18 November 2024
- 39.5 Should phases 1 and 2 fail within the predetermined time periods set out above, the properties would be handed over to an auctioneering business to auction off the farms by no later than the 29th of November 2024.

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40.

I interpose to state that the Respondent and his entire team were intimately involved in the development preparation and publication as well as adoption of the plan as outlined and eventually adopted. At all relevant times the First Respondent was the phase one buyer. He only needed to raise the funds.

41.

This business rescue plan was adopted unanimously (by 100% vote in favour) on the 28th of October 2024. A circular was sent to all affected parties confirming the adoption of the plan, which is attached hereto as Annexure "DM-10".

42.

The very purpose of the plan, particularly phase 1, was to provide the First Respondent the time to raise the necessary funds to purchase the farms owned by Proximitas. The BRP's had worked with him since July 2024 to eventually get to the adoption of the plan by 28 October 2024. It was admittedly a complicating factor that ABSA, the major creditor of Proximitas and the group, did not want to fully release Proximitas from suretyship for the debt of BSFT. The obvious reason was the pending sequestration application of the Trust. The negotiations were as between Absa and the Respondent directly relating to the affairs of the BSFT.

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The option was always there for First Respondent to only acquire the Proximitas farms as it owned the packhouse which is an essential asset. The First Respondent for some reason only known to him, insisted on acquiring and settling the BSFT debts. As can be shown from the above, the First Respondent went to great lengths to assist the BSFT of which he is not a beneficiary or trustee as far as Applicants know.

43.

The Respondent sought time to get his funding in order and advised the BRP's that Standard Bank indicated that they would fund the transaction. This is also set out in Annexure "DM-5". An extension of the time periods was approved by the creditors on 15 November 2024, particularly Absa Bank, to allow the First Respondent to raise the funding. On 3 December 2024 a further creditors meeting was convened wherein an extension was again granted to the First Respondent and failing his performance, the auction of the farms would proceed in February 2024. The Respondent has up until today failed to raise the necessary funding to purchase the assets of Proximitas and in the premises, the BRP's were dutybound and compelled in terms of the provisions of the Companies Act, to implement the adopted rescue plan.

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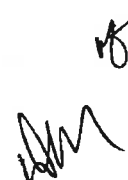
44.

During or about January 2025 WH Auctioneers were formally provided with a mandate to proceed with the auction. The details of the auction was provided to First Respondent on 17 January 2025 as well as the 20th of January 2025. I attach hereto emails of the Second Applicant as Annexures "DM-11 and DM-12" in confirmation. First Respondent demanded a clause inserted that he could stop the auction if he came up with funds up to 5 days before the auction. It is included in paragraph 33 of the mandate and attached hereto as Annexure "DM-13". At all relevant times the First Respondent was fully aware of the implementation of the adopted business rescue plan and the intended sale. The First Respondent in fact alerted the Second Applicant to the advertisement of the auction per Whatsapp on 25 January 2025. It is also evident from Annexure "DM-5" that First Respondent was well aware of the pending auctions.

45.

Prevention of implementation

On 31 January 2025 the BRP's instructed their attorney to address a letter to the First Respondent relating to the wind-down process and sale of the farms. A true copy of the letter is attached hereto as Annexure "DM-14". Therein the details of practical arrangements are set out as well as information sought.



No response was received and a follow up letter was transmitted at 09h45 on 6 February 2025, which is attached hereto as Annexure "DM-15". Herein First Respondent was notified of his obligations and warned what the consequences would be should he fail to cooperate.

46.

This letter solicited a response later in the day and at 15h06. First Respondent through his attorney objected to the auctions as contained in the adopted rescue plan based on alleged irregularities. It is attached as Annexure "DM-16". The irregularities are assumed to refer to the allegations contained in the First Respondent's application for a postponement as referred to above. The BRP's were threatened with an urgent application to either withdraw or postpone the auction. It appears that despite the adoption of a binding plan, an argument is made out that the sale of the assets are not in the interest of the BSFT.

47.

In response the BRP's addressed a letter to the First Respondent's attorney dated 7 February 2025 which is attached hereto as Annexure "DM-17". One aspect of importance is that Van Schalkwyk's mandate to act for and on behalf of Proximitas was disputed. This is the very basis upon which an urgent application launched by First Respondent and referred to hereunder was dismissed.

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48.

Thereafter a string of emails followed which is attached hereto as Annexure "DM-18" (pages 1 to 8) and which is attached for fear of being accused of being selective in disclosing relevant facts. The essence is simply the BRP's seeking information and counter allegations. What is clear is that First Respondent is conflicted as between his involvement as director of Proximitas and in apparent control of the BSFT as well as with Second Respondent. I also attach as Annexure "DM-19" a string of emails leading up to the eventual launching of the urgent application.

49.

Urgent application : Makhanda High Court Case No: 735/2025

Once again, I will not burden the Honourable Court with the details of all the correspondence unless it becomes necessary, but despite threatening from the 6th of February 2025 to launch proceedings to stay the auction, the First Respondent purporting to act on behalf of Proximitas, launched an urgent application in the High Court Eastern Cape Division, Makhanda under case number 735/2025 on 25 February 2025 and served on the 26th to be heard at 15h00 the same day.

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This left the Applicants, who were the First and Second Respondents in that application, less than 6 hours to peruse, prepare, travel to Grahamstown (Makhanda) and argue the urgent application to stay the auction which was scheduled for the 27th of February 2025.

50.

In this application the First Respondent once again resorted to making false and defamatory allegations of the Applicants to bolster his case.

51.

Without filing any opposing papers the Applicants herein (Respondents under case number 735/2025) successfully opposed the application, which was dismissed with costs on Scale C. Several arguments were prepared in opposition, which inter alia included:

51.1 The fact that the Respondent, Kiran Moodley, who purported to act on behalf of Proximitas, had no mandate from the BRP's to do so as warned in writing on 7 February 2025 (Annexure DM-17)

51.2 Mr Moodley was not an affected person or creditor

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- 51.3 The attorneys purportedly acting for the Blackie Swart Familie Trust and Proximitas could not produce a power of attorney granted to them by the Applicants to launch the proceedings in terms of Rule 7(1) of the rules of this Honourable Court
- 51.4 There was no urgency in the application as the Applicants had known thereof for months prior to launching the application. The first threat of an application to stay the auction was contained in a letter of the Respondent's attorney dated 6 February 2025 (Annexure DM-16). The First Respondent had known of an intended auction prior to the publication and adoption of the plan and of the alleged misconduct from at least 13 January 2025 when Van Schalkwyk made his threats
- 51.5 First Respondent knew at least on 17 January 2025 of the auction when he was provided with the auction conditions (Annexure DM-11)
- 51.6 The application was launched to stay an auction which was the implementation of an adopted business rescue plan but no relief was sought for the setting aside of the rescue plan. This I submit was in itself a fatal miscalculation
- nr
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51.7 There was a material non-joinder of affected persons and interested parties to the auction proceedings such as *inter alia* the auctioneers themselves and the bank who held the security and was owed hundreds of millions and to top it all was the major creditor who proposed and voted for the sale of the farms

51.8 The creditors, particularly those who hold security over the properties, had voted in favour of the plan and demanded that the auction proceed. The BRP's were and still are under threat from the creditors to implement the plan as adopted.

52.

The First Respondent and his attorney approached the court making averments which were allegedly again supported by Le Roux by way of an unsigned confirmatory affidavit. Due to his affidavit again being unsigned, the Applicants enquired from Le Roux if he had in fact supported and signed a confirmatory affidavit. He denied doing so. Applicants have instructed its attorneys to report First Respondent and his legal team's behaviour to the Legal Practise Council as this was the second instance that unsigned copies of affidavits were presented to court in order to support hearsay evidence which was false.

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53.

The First Respondent's conduct was malicious and vexatious to say the least resulting in BRP's obtaining a cost order against Proximitas in opposing the relief, the very company they are in charge of. This is a direct and unnecessary loss, which must after taxation be recovered from the First Respondent. Proximitas is now in the invidious position that it must sue its director for the unnecessary loss incurred by the launching of the proceedings and dismissal thereof with costs on Scale C. A copy of the Order is attached hereto as Annexure "DM-18".

54.

Shareholding change

During the preparation of the business rescue plan the First Respondent advised the BRP's that he had through his company, Blue Crane Organics (Pty) Ltd, the Second Respondent, become the shareholder in Proximitas. The trustees of the BSFT had apparently resolved to sell the shares and the BRP's learned from the annexures to case number 735/2025 that the shares in Proximitas were sold for R1000.00.

ms

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55.

The sale of the shares was during a time that Proximitas was in business rescue and there was a pending sequestration application of the Blackie Swart Familie Trust (BSFT). The First Respondent in an affidavit under case number 735/2025 supra allege that such disposal was at the advice of the Second Applicant. It is vehemently denied as Second Applicant and its legal representative emphatically warned the First Respondent that such disposition would be set aside.

56.

During discussions leading up to the adoption of the business rescue plan, the BRP's on several occasions expressed their concern to the First Respondent personally about the acquisition of the shareholding under circumstances where the Trust stands to be sequestrated, especially when an application had already been launched. Whilst the BRP's cannot dictate to the BSFT what they must do or not do with their shares, it appears on a proper interpretation of the authorities that Section 137(1) deals with the classification or status of securities and not the transfer thereof. In the premises the BRP's had no say in the transfer of the shareholding.

MB
Wm

57.

The First Respondent became a director when Mr Johann Swart resigned. His reasons are set out in an email dated 1 October 2024. In hindsight it appears that the First Respondent was under the impression that the affairs of Proximitas would fall "under his management". This is a misconception perpetuated by First Respondent throughout the entire process and as adopted in the correspondence with his attorney and affidavits filed in the applications referred to herein. He seems to be unaware of or oblivious to the provisions of Section 140(1)(a) of the Companies Act which provides that the BRP's have full management control of the company.

58.

The BRP's had the opportunity to meet with the provisionally appointed trustees in the insolvent estate of the BSFT and they have indicated in no uncertain terms that they at this point in time shall seek the setting aside of the disposal of the shares. The First Respondent was forewarned by the BRP's of this probability and not that it is just a mere possibility.

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[Signature]

59.

Ongoing position in respect of expenses and salaries

The BRP's were on a weekly basis requested to pay expenses for and on behalf of the Trust and in this respect, several demands are made to pay wages as well as salaries. Despite seeking clarification from the First Respondent, he has to date failed, refused and/or neglected to provide the information lawfully sought from the BRP's before salaries and wages are paid. The BRP's must satisfy themselves that the expenses relate to Proximitas and not for the BSFT or any other entity as it transpired. It was provisionally paid due to the fact that there were threats of violence. We were made aware of riots when staff were not paid in recent years. Properties and vehicles were burned down and destroyed within this very group.

60.

The relevance of this is that the BRP's have established via third parties that the First Respondent, through his company Blue Crane Organics, in fact entered into an agreement with Kaap Agri represented by attorney Tiaan Labuschagne in terms whereof he purchased back certain farms already sold within the group with the undertaking to pay the wages and all expenses relating to the farm operations.

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The BRP's have now established that certain of the names of farm workers included in the wage payment list for payment by Proximitas are working on the farms owned by Kaap Agri and for which the First Respondent, through his company Blue Crane Organics, is farming for his own benefit. It is a blatant fraudulent transaction and made in the best interest of the First Respondent through his ownership of Blue Crane Organics to the detriment of Proximitas.

61.

The First Respondent and his team have on numerous occasions been informed that Proximitas cannot pay expenses of third parties especially that of the BSFT or Blue Crane Organics. These requests are contained *inter alia* in another string of emails attached hereto as Annexure "DM-19" and "DM-20". At one point the BRP's refused to pay any salaries or wages unless it was stated under oath that the employees contributed directly to the affairs of Proximitas. I also attach hereto an email dated 17 January 2025 as Annexure "DM-21" explaining to Mr Dean Pillay, a member of First Respondent's team, that the phase of the rescue is in "auction conditions" and that all expenses are to be cleared by the BRP's. First Respondent was copied in as recipient on this email, which is yet further confirmation that he was well aware of the pending auction.

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62.

Urgent application by Purchasers pursuant to auction

It has become necessary for the purchasers of the various farms to launch urgent proceedings in the High Court Makhanda under case number 1005/2025 in order to obtain access to the farms. The Applicants therein are Twente Partners Farms (Pty) Ltd, Joubert Sitrus (Pty) Ltd, Golden Ridge Farming (Pty) Ltd and Tibshraeny Citrus Enterprises (Pty) Ltd. The Respondents are the First Respondent and Mr Johann Swart, an erstwhile director of Proximitas and Trustee of the BSFT. The Respondents were cited as they had *inter alia* instructed farm managers to prevent the purchasers from taking occupation.

63.

First Respondent and Mr Swart have caused trucks to be parked in front of the gates and locked the gates to the farms with locks and chains. Security guards were also placed at the entrance of the farms which worked for Mr Johann Swart.

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64.

On Monday, 17 March 2025 the BRP's attorney of record was approached by one of the purchasers at the auction of the farm known as Goede Hoop Packhouse that various employees are applying for work at the packhouse and that Blue Crane Organics (Second Respondent) are going to employ them thereat. Blue Crane had no right to the farms.

65.

I attach hereto a copy of a supplementary affidavit filed by Mr Francois Joubert, one of the purchasers of the farm, confirming what he found on the land he had purchased as Annexure "DM-22".

66.

These individuals have paid their deposits and are in terms of the conditions of sale of the auction, entitled to occupation of and carry the risk in the property. First Respondent is clearly of the view that Second Respondent is somehow entitled to take over control and occupation of the packhouse property, which conduct is unlawful.

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67.

In this application launched by the buyers, First Respondent deposed to an affidavit which again contained false and defamatory allegations. Due to this his attorney Van Schalkwyk was compelled to withdraw from the matter on ethical grounds when the lies of First Respondent were exposed. This is dealt with in the judgment. I attach hereto as Annexure "DM-23" a copy of the full judgment and order issued by Malusi J on 1 April 2025 interdicting *inter alia* the First Respondent from denying the purchasers access to the farms.

68.

In the answering affidavit of the First Respondent to the application for unrestricted occupation to the properties, the First Respondent deposed to an opposing affidavit *inter alia* that he took specific issue with the fact that Hemelsvlakte and Boschkraal Farms were allegedly sold without the necessary authority and without full disclosure to affected persons. What the First Respondent however failed to state was that he was intimately involved in the transactions relating to the sale of these properties and not only signed a letter dated the 19th of September 2024 inviting the then purchaser of the farm Boschkraal to renew its offer but in fact personally signed the Offer to Purchase.

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He also personally signed the resolution co-signed by the BRP's and the director and shareholder of Proximitas as well as in his capacity as shareholder authorising the sale of the properties. This exposed lie compelled attorney Van Schalkwyk to withdraw as attorney of record, who on his own admission was the author of the opposing affidavit.

69.

It is rather disconcerting that despite the judgment of Malusi J being pending to be delivered, the First Respondent through attorney Van Schalkwyk who had withdrawn as attorney on ethical grounds, addressed a letter to the BRP's addressing the occupation of other properties. A true copy is attached hereto as Annexure "DM-24". This was done despite being fully aware of the auctions and having a copy of the sale agreements. This letter was responded to with the obvious request that Van Schalkwyk explains his conduct in light of his withdrawal only days beforehand and which response is attached hereto as Annexure "DM-25" on the same day the BRP's attorney was contacted by attorney Colin MacKenzie in respect of the Kariega property that was sold to his client, the Elmarie Trust, the successful bidder. The content is self-explanatory and attached as Annexure "DM-26". It contains a statement that the sale would be set aside. The BRP's response is attached as Annexure "DM-27". Van Schalkwyk alleges that his client has no knowledge of the sale but he had already been provided with all the contracts.



In a surprising turn of events Nolte Smit Attorneys who were Van Schalkwyk's correspondent attorney in Grahamstown and who formally came on record when Van Schalkwyk withdrew, sent a letter to the BRP's on 31 March 2025 well knowing of the pending judgment of Malusi J the following day alleging that the BRP's had mandated the First Respondent to manage, oversee and conduct the farming operations on the Proximitas farms. The letter is attached as Annexure "DM-28".

70.

This approach flies directly in the face of the adopted rescue plan and patently false and misleading. The BRP's response is attached as Annexure "DM-29". First Respondent continues to frustrate the implementation of the plan which is the successful sale and transfer of the farms for the benefit of the creditors. The latest tactic is only a play to retain possession of and to continue farming on the Proximitas farms and to threaten the BRP's.

71.

The First Respondent is well aware of the fact that Proximitas sources produce, packs it and sells it on and by doing so, incurs costs. It was always the practice and contractual relationship that Proximitas is the seller to customers such as Freshgro and Veganis, yet he attempts to divert funds lawfully due to Proximitas to either himself or the Trust. I attach hereto:

wb
[Signature]

71.1 An email from Marike Swart to SA Fresco attempting to divert income due to Proximitas to the First Respondent as Annexure "DM-30"

71.2 An email from Rossouws Attorneys dated 28 March 2025 which includes an email from First Respondent creating false facts that income is due to the now provisionally sequestrated BSFT well knowing that the income is contractually due to Proximitas as Annexure "DM-31"

72.

Application for liquidation : Makhanda High Court Case No: 1453/2025

To the surprise of the Applicants the First and Second Respondents launched yet another application on an extremely urgent basis in the Makhanda High Court under case number 1453/2025. The application itself was served on the BRP's after office hours and consisted of 1732 pages. The BRP's were afforded to Monday, the 14th of April 2025 to indicate whether they oppose the application and to file answering affidavits, if any, before 15h30 on Tuesday, the 15th of April 2025. The matter was set down for hearing on the 17th of April 2025.

73.

The relief sought in that application was that:

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73.1 the business rescue plan as adopted be reviewed and set aside;

73.2 That Proximitas be placed in provisional winding up with the usual relief in respect of the return day and service thereof. What is of importance is that the Applicants in that matter also sought that the business rescue plan together with all aspects in relation to the implementation thereof be stayed, which would include the transfer of the properties to the purchasers. A practical difficulty was of course that there was a final order interdicting and restraining the Respondents from entering the farms which was issued under case number 1005/2025.

74.

This again forced the BRP's and Proximitas' hands to jump to oppose High Court applications instituted by the Respondents herein. The application was opposed by inter alia Absa Bank, the major creditor, and other Respondents, which application was struck off the roll on 17 April 2025 with the Applicants, the Respondents in this application, be ordered to pay the costs occasioned by the striking of the matter from the roll on scale C, which costs included the costs of both senior and junior counsel. In this application the First Respondent again raised his concerns with the sale of the farm Boschkraal and Hemelsvlakte without disclosing to the court that he was the very party who facilitated these transactions.

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75.

The Second Respondent herein, being the Second Applicant in the liquidation proceedings, purports to launch the application in its capacity as a creditor of Proximitas. The First Respondent as a deponent to that application, however does not disclose to the court that in a meeting held on the 3rd of December 2024 wherein he yet again sought a postponement of the implementation of the rescue plan in order to raise his funds, categorically stated that all expenses are so done at his own risk. A copy of the record of proceedings is attached hereto as Annexure "DM-32".

76.

Furthermore the BRP's had not given consent for anybody to incur costs on his behalf as the affairs of Proximitas was in a wind-down process and any action without the express authority of the BRP's is void.

77.

From the above it is clear that the Respondent is:

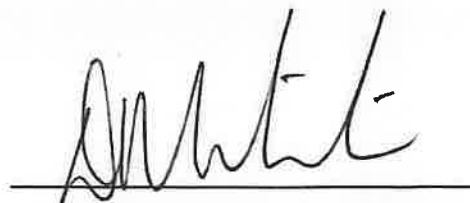
77.1 Conflicted in respect of the interest of Blue Crane Organics (Pty) Ltd, the Blackie Swart Familie Trust and the affairs of Proximitas

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Bim

- 77.2 Not acting in the best interest of Proximitas but that of Blue Crane and the BSFT
- 77.3 Actively frustrating the implementation of an adopted business rescue plan
- 77.4 Is impeding the practitioners' performance of their powers and functions
- 77.5 Is in breach of his fiduciary duties to Proximitas
- 77.6 Committed perjury on more than one occasion
- 77.7 Attempted to divert funds for personal gain
- 77.8 The BRP's have *ad nauseam* requested the First Respondent to provide them with information, which he continues to refuse to provide.

78.

In the premises the Applicants seek an order as set out in the Notice of Motion.



DAVID MASTERTON

SIGNED AND SWORN before me at GQEBERHA on this 23rd day of APRIL 2025, the Deponent having acknowledged that he/she knows and understands the contents of this Affidavit, which is deposed to in accordance with the regulations governing the administration of an oath as more fully set out in Government Notice R1258 of 21 July 1972, as amended by Government Notice 1648 dated 19 August 1977 and Government Notice 903 dated 10 July 1998.



COMMISSIONER OF OATHS

COMMISSIONER OF OATHS
MELANY FOUCHE
3 Kestell Street
Parsons Hill, Port Elizabeth, 6001
Practising Attorney RSA



"DN-2"

53

Certificate issued by the Companies and Intellectual Property Commission on
Thursday, September 12, 2024 06:22

Disclosure

Enterprise Number 2024 / 578906 / 07
Enterprise Name BLUE CRANE ORGANICS (PTY) LTD



Registration number 2024 / 578906 / 07
Enterprise name BLUE CRANE ORGANICS (PTY) LTD
Enterprise shortened name NOT APPLICABLE
Enterprise translated name NOT APPLICABLE
Registration date 12/09/2024
Business start date 12/09/2024
Enterprise type PRIVATE COMPANY
Enterprise status IN BUSINESS
Financial year end FEBRUARY
Type of MOI STANDARD (COR15.1A)
Main business/main object BUSINESS ACTIVITIES NOT RESTRICTED.

Addresses	Postal Address	Address of Registered Office
	8 BURTON AVENUE	8 BURTON AVENUE
	VANES ESTATE	VANES ESTATE
	KARIEGA	KARIEGA
	EASTERN CAPE	EASTERN CAPE
	6230	6230

Company Location of Records 8 BURTON AVENUE
VANES ESTATE
KARIEGA
EASTERN CAPE
6230

Directors

Surname and first names	Status	ID number or date of birth	Director type	Appointment date	Addresses
MOODLEY, KIRAN	ACTIVE	8909105107084	DIRECTOR	12/09/2024	Postal 8 BURTON AVENUE, VANES ESTATE, KARIEGA, EASTERN CAPE, 6230 Residential 8 BURTON AVENUE, VANES ESTATE, KARIEGA, EASTERN CAPE, 6230

The Companies and Intellectual Property Commission of South Africa
P.O. Box 429, Pretoria, 0001, Republic of South Africa
Docex 256, Pretoria
Contact centre 086 100 2472
www.cipc.co.za



[Handwritten signature]

SL

Certificate issued by the Companies and Intellectual Property
Commission on Thursday, September 12, 2024 06:22



Disclosure

Enterprise Number 2024 / 578906 / 07
Enterprise Name BLUE CRANE ORGANICS (PTY) LTD

Directors

Surname and first names	Status	ID number or date of birth	Director type	Appointment date	Addresses
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The Companies and Intellectual Property Commission of South Africa
P.O. Box 429, Pretoria, 0001, Republic of South Africa
Doeck 266, Pretoria
Contact centre 086 100 2472
www.cipc.co.za



Handwritten signatures and initials.

Share Register / Securities Register

Company Name: PROXIMITAS INVESTMENTS 60 (PTY) LTD

Registration number: 2001/012801/07

Street Address: KANAALPLAAS, KIRKWOOD, EASTERN CAPE, 6120

Postal Address: KANAALPLAAS, KIRKWOOD, EASTERN CAPE, 6120

Shareholder Surname	Full Names	ID Number	Certificate Nr.	Number Of Share Issued	Class	Date Issued	Amount Paid	Email Address	Contact Number
BLUE CRANE ORGANICS (PTY) LTD 2024 / 578906 / 07			005	1000	Ordinary Shares	10/10/2024	R1,000.00	kiran@ddoregos.co.za	061 473 4030

Active: Yes

Signature: 

Date: 10/10/2024

"DM-3" (55)



"DN-4"

(8)

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 ESKOM
 ABSA Bank
 ABSA Bank
 Greyvensteins Attorneys
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 ESKOM
 Citrus Growers Association
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 Van Der Meer Attorneys
 Rufus Dercksen Inc
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 ABSA Bank
 Pagdens Attorneys
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Louis F Greeff
 Luzanne Brink
 Mara Venter
 Marika Swart
 Maryke Boshoff
 Carl Mostert
 Mucharambeyi Nhawu
 Desiré Meyer
 Niel Dercksen
 Njabulo Kubheka
 Johann Oosthuizen
 Pieter de Jager
 Rameez Cassim
 Salome Jenner
 Gretha Schoeman
 Robert Miller
 Shirlene van Eyk
 Simon Lambrechts
 Simoné du Toit
 Stefan Hammse
 Tiekie Grobler
 Wilfred Kanes
 Yvonne Lourense
 Rob Parker
 Suzi van der Merwe

"DM-5"

(58)

Monday, March 31, 2025 at 14:31:13 South Africa Standard Time

Subject: FW: Proposal for Collaborative Resolution of Proximitas and BSFT Debt Obligations [ABSA-ABSALEGAL.FID219944]
Date: Wednesday, 19 March 2025 at 12:39:38 South Africa Standard Time
From: Pat Pattinson | Business Rescue 360
To: Paul Bester
Attachments: image002.png, image003.jpg

From: Stefan Harmse (ZA) <Stefan.Harmse@absa.africa>
Date: Tuesday, 14 January 2025 at 11:24
To: kiran@doregos.co.za <kiran@doregos.co.za>
Cc: Colin Botha (ZA) <Colin.Botha@absa.africa>, Andrew Weber (ZA) <Andrew.Weber@absa.africa>, Gerrit Gouws (ZA) <Gerrit.Gouws@absa.africa>, Pat Pattinson | Business Rescue 360 <Patp@businessrescue360.co.za>, David Masterton | Business Rescue 360 <Davidm@businessrescue360.co.za>, John Williams (ZA) <John.Williams@absa.africa>, Nomakhosi NHLAPO (ZA) <Nomakhosi.NHLAPO@absa.africa>, 'dgouws@tvsattorneys.co.za' <dgouws@tvsattorneys.co.za>
Subject: FW: Proposal for Collaborative Resolution of Proximitas and BSFT Debt Obligations [ABSA-ABSALEGAL.FID219944]

Good day Kiran

WITHOUT PREJUDICE

RE: PROXIMITAS INVESTMENTS 60 (PTY) LTD (UNDER SUPERVISION) / BLACKIE SWART FAMILY TRUST ("BSFT")

We acknowledge receipt of your email dated 5 January 2025 and note the content thereof.

We wish to respond to your e-mail as follows however failure to address each and every averment should not be construed as an admission of the correctness thereof and we reserve the right to respond thereto should it become necessary.

We confirm that in terms of the adopted business rescue plan, as amended from time to time, the plan under Phase 1 provides for an offer to be presented to the creditors which offer is to be supported by the necessary proof of funding. In this regard you have failed to date to provide proof of funding despite numerous indulgences in respect thereof. It would further appear that proof of funding will in all probability only be forthcoming at end of January 2025, if at all.

In the absence of a valid offer and proof of funding the BRP's are to continue with phases 2 and 3 of the adopted plan i.e. essentially wind-down of the company.

With respect to your averment re significant investments to ensure the farms are operational and ready for the 2025 harvest you are requested to provide the Bank with written proof of the following:

1. The R15m purportedly paid to the company by you/your group ensuring the farms are

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- operational, including funds i.r.o fertigating, spraying, and other critical preparations;
2. all other funds paid to the company and/or the BRP's in lieu of ensuring the farms are operational;
 3. Settlement of Kaap Agri; and
 4. Settlement of the Woolies Trust

With regards to the reduction of the Absa debt, we confirm that same was a direct result of a sale of the Boschkraal property and not any funding provided by yourself.

We further wish to place on record that Absa to date has not received any dividends/payments in reduction and or settlement of its debt while other major creditors have been settled. Absa therefore remains at risk.

You are further requested to provide both the BRP's and the Bank with your offer as it would appear from the content of your e-mail that the offer (as agreed in principle previously) has potentially changed.

Until such time as we have received a formal offer acceptable to the Bank supported by the necessary funding, the adopted business rescue plan must be implemented and the Banks rights remain strictly reserved, including its rights in respect of suretyships provided by BSFT for the indebtedness of Proximitas.

This matter requires your urgent attention.

All the Bank's rights herein remain strictly reserved.

Stefan Harmse

Principal Legal Counsel

Relationship Banking Legal: Business Support and Restructure

M +27 82 853 0035

E stefan.harmse@absa.africa

Absa Bank Limited, Alice Lane, Sandton, 2196, South Africa

www.absa.africa

"Legal Privileged and Confidential for the Purpose of Providing Legal Advice"

Your story matters



(Please consider the environment before printing this email

COMPANY CONFIDENTIAL - THIS DOCUMENT AND ANY ATTACHMENTS THERETO IS FOR INTERNAL PURPOSES ONLY UNLESS EXPRESSLY PROVIDED OTHERWISE AND CONTAINS LEGAL ADVICE THAT IS PRIVILEGED AND CONFIDENTIAL. IT MAY NOT BE COPIED, DISCLOSED AND/OR DISTRIBUTED TO ANY OTHER PERSON AND MAY ONLY BE USED FOR THE PURPOSES OF THE MATTER IN RESPECT OF WHICH IT IS ADDRESSED

From: kiran@doregos.co.za <kiran@doregos.co.za>

Sent: Sunday, January 5, 2025 9:26 PM

To: Stefan Harmse (ZA) <Stefan.Harmse@absa.africa>; Colin Botha (ZA) <Colin.Botha@absa.africa>

Cc: John Williams (ZA) <John.Williams@absa.africa>; Nomakhosi NHLAPO (ZA)

Handwritten signatures and initials.

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<Nomakhosi.NHLAPO@absa.africa>; dgouws@tvsattorneys.co.za

Subject: Proposal for Collaborative Resolution of Proximitas and BSFT Debt Obligations

External Message – Be cautious. If suspicious click the "Report Phishing" button.

Dear Stefan and Colin

“Without prejudice “

I trust this email finds you well.

Following our recent discussions, I am writing to present a proposal that I believe is in the best interests of all stakeholders involved in Proximitas Investments 60 (Pty) Ltd ("Proximitas") and the Blackie Swart Familie Trust ("BSFT"). The proposal is designed to ensure the continuity of operations, the preservation of asset value, and a collaborative conclusion to the business rescue process

To date, I have made significant investments to ensure the farms are operational and ready for the upcoming harvest. This includes fertigating, spraying, and other critical preparations, all at my personal financial risk. I invite ABSA to inspect the farms at their convenience to confirm these investments and assess the readiness for the next harvest on farms both belonging to Proximitas and BSFT respectively.

Since my appointment as Director and Owner of Proximitas, I have worked collaboratively with the business rescue practitioners (BRPs) to significantly reduce the company's debt exposure:

- **Kaap Agri Debt:** Fully settled – R45 Million
- **Woolies Trust:** Settled R24 Million, save for a concurrent claim of R4 million, which I commit to resolving over 24 months.
- **ABSA Debt:** Reduced by approximately R60 million.

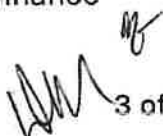
The remaining ABSA exposure for Proximitas is now + - **R85 million**, excluding the surety debt linked to BSFT.

The business rescue process has served its purpose in stabilizing Proximitas. However, it has become costly and is no longer necessary. I propose a seamless and collaborative conclusion to the BR process, including the following:

- **Full Control:** The BRPs hand over operational and financial control to me, allowing for more direct and efficient decision-making.
- **Investment:** Upon the conclusion of the BR process, I will inject an additional **R35 million** into Proximitas to ensure the success of the next harvest and ongoing operations.
- **Settlement of Concurrent Creditors:** I commit to settling all remaining concurrent creditors' claims within 24 months.

BSFT faces a liquidation application on 30 January 2025. I am prepared to intervene in this process to stay the liquidation and work collaboratively with ABSA to resolve BSFT's liabilities, preserving value for all stakeholders.

Standard Bank has communicated that their credit committee requires additional time to finalize the funding process, with timelines extending to mid- end January 2025. While awaiting this finalization, I propose keeping the farms operational to protect and enhance


3 of 5

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the value of the assets. I have attached the email received from Standard bank on the 3rd of January 2025 confirming their timelines.

Auctioning the properties risks depressed values, which would undermine ABSA's recovery prospects. By maintaining operations and seeing through the next harvest, we ensure that the full value of the assets is preserved.

My additional R35 million investment will protect the harvest and operational continuity, directly benefiting ABSA by enhancing the value of the farms and securing a stronger financial position for Proximitas.

Concluding the BR process eliminates the ongoing costs associated with the BRPs, which are no longer necessary given the progress already achieved.

I invite ABSA to conduct an on-site inspection to validate the investments I have made and to assess the readiness of the farms for the next harvest. I am available to discuss this proposal in detail and address any concerns or adjustments ABSA may require.

Upon acceptance of this proposal and the ending of the BR process, I will inject the R35 million into Proximitas and finalize all necessary preparations for the upcoming harvest, I have attached proof of funds.

This proposal represents a fair and transparent approach that balances the interests of all stakeholders, including ABSA, Proximitas, and BSFT. It ensures operational continuity, avoids the risks of liquidation, and provides ABSA with a clear path to full recovery of its exposure.

I trust that ABSA will view this proposal as a strong and mutually beneficial solution to finalize this matter.

Kind regards,

Kiran Moodley
Chief Executive Officer

62 Newton Street
Newton Park, Gqeberha, 6045
+27 (0) 41 363 0064 (Head Office)



 +27 (0) 6) 473 4030

 kiran@doregos.co.za

 www.captaindoregos.co.za

Absa Bank Limited is a subsidiary of Absa Group Limited and is an Authorised Financial Services Provider and Registered Credit Provider, registration number: NCRCP7.

Absa Bank Limited provides services to Absa Group Limited and its subsidiaries.

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27 JAN 2025

IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)

Case no.: 526/2024

In the matter between:

MPACT OPERATIONS (PTY) LTD

Applicant

t/a MPACT CORRUGATED

and

MARTINUS SWART N.O.

First Respondent

JOHANNA CATHERINA SWART N.O.

Second Respondent

FRANCOIS PETRUS STRYDOM N.O.

Third Respondent

NOTICE OF ACTING

BE PLEASED TO TAKE NOTICE that we hereby file our notice of acting on behalf of the Respondents.

BE PLEASED TO TAKE FURTHER NOTICE that the said Respondents hereby nominates the under mentioned address of his Attorneys at the address where he will accept service of all process, notices and documentation in this action.

Dated at GQEBERHA on this 27th day of January 2025

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Tyne Kuylen

C/O NOLTE SMIT ATTORNEYS

51A Hill Street

MAKHANDA

Tel: 046 622 7209

Email: tyne@noltesmit.co.za

D GOUWS INC. ATTORNEYS

Respondents Attorneys

136 Cape Road

Mill Park

GQEBERHA

TEL: 041 373 0037/8

Email: dgouws@tvsattorneys.co.za

Ref: DGOUWS/TVS/SS0449

TO: **THE REGISTRAR**
HIGH COURT
GQEBERHA

AND: C/O NETTELTONS ATTORNEYS

118A High Street

MAKHANDA

Tel: 046 662 7149

Email: sam@netteltons.com

Ref: Ms Pienaar

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RUFUS DERCKSEN

Applicant's Attorney

Unit4, Titan House

3 Termo Street

Techno Park

STELLENBOSCH

TEL 021 886 6992

Email: hesli@rufusdercksen.co.za

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11/4/25
27 JAN 2025

IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)

Case no.: 526/2024

In the matter between:

MPACT OPERATIONS (PTY) LTD

Applicant

t/a MPACT CORRUGATED

(respondent in the postponement application)

and

MARTINUS SWART N.O.

First Respondent

JOHANNA CATHERINA SWART N.O.

Second Respondent

FRANCOIS PETRUS STRYDOM N.O.

Third Respondent

(applicants in the postponement application)

NOTICE OF MOTION

IN THE RESPONDENTS' POSTPONEMENT APPLICATION

BE PLEASED TO TAKE NOTICE THAT an application will be made on behalf of the Respondents in the main application to the above Honourable Court on Thursday, 30 January 2025, at 09h30 or so soon thereafter as the matter may be heard, for an Order in the following terms:

1. The application is postponed to the opposed roll on a date to be determined by the Registrar.

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2. The Respondents shall pay the costs of this application.
3. Further and/or alternative relief.

TAKE NOTICE FURTHER that the accompanying affidavit of Kiran Moodley, with annexures, will be used in support of the application.

TAKE NOTICE FURTHER that the Respondents have appointed the offices of C/O NOLTE SMIT ATTORNEYS situated at 51A Hill Street, MAKHANDA the address at which it will accept notice and service of all process in these proceedings, and further that they shall accept service at the following email address: dgouws@tvsattorneys.co.za.

TAKE NOTICE FURTHER that if you intend to oppose this application, you are required to notify Gouws Attorneys of same and deliver any answering affidavits, if any, by no later than Wednesday, 29 January 2025, at 11:00.

Dated at GQEBERHA on this the 27th day of January 2025.



D. GOUWS INC ATTORNEYS

Attorneys for the applicants in the postponement application
and Respondents in the main application

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136 Cape Road

Mill Park

GQEBERHA

Tel.: 041 373 0037

Email: dgouws@tvsattorneys.co.za

C/O NOLTE SMIT ATTORNEYS

51A Hill Street

MAKHANDA

Tel: 046 622 7209

Email: tyne@noltesmit.co.za

TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT

AND TO: RUFUS DERCKSEN INC.

Attorneys for the Applicant in the main application

6 Quantum Street

Technopark

STELLENBOSCH

Tel.: 021 886 6992

Email: hesli@rufusdercksen.co.za

C/O NETTELTONS

118A High Street

MAKHANDA

Tel.: 046 622 7149

Email: ilze@netteltons.co.za

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IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)

Case no.: 526/2024

In the matter between:

MPACT OPERATIONS (PTY) LTD

Applicant

t/a MPACT CORRUGATED

and

MARTINUS SWART N.O.

First Respondent

JOHANNA CATHERINA SWART N.O.

Second Respondent

FRANCOIS PETRUS STRYDOM N.O.

Third Respondent

FOUNDING AFFIDAVIT
IN THE RESPONDENTS' POSTPONEMENT APPLICATION

I, the undersigned,

KIRAN MOODLEY

do make an oath and say that:

1. I am an adult male management representative of the Blackie Swart Familie Trust.
2. The facts contained herein fall within my own personal knowledge and belief,


Kiran Moodley

unless the context thereof indicates otherwise, and are both true and correct.

3. I am duly authorised to depose to this affidavit on behalf of the trustees of the Blackie Swart Familie Trust ("the Trust").

BACKGROUND

4. This postponement application is late; therefore, I will state the background facts succinctly and keep this affidavit as short as possible.
5. This matter has a long history, which is set out in a letter from Rufus Dercksen Inc. dated 13 December 2024. I attach it as annexure "KM1". I admit that the letter does not paint a flattering picture of how the Trust has managed this litigation, and I attach the letter to disclose what has occurred and not withhold any facts.
6. However, I must state several points clarifying how the Trust dealt with the litigation and the circumstances that have affected this.
7. I cannot provide an answer for the early events outlined in paragraph three of the letter, but I will comment on events within my knowledge.
8. A business rescue practitioner, David Masterton, was appointed as the trust's representative by a power of attorney. Furthermore, the attorneys firm, David Le Roux Inc., was initially appointed in these proceedings as the Trust's

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attorneys of record with authority to deal with this matter. The trustees left the dealings with David Le Roux Inc., in the understanding that it would do everything necessary to resolve this matter. The firm took instructions from Masterton and filed his answering affidavit.

9. Masterton is a chartered accountant (and practising business rescue practitioner), and being a chartered attorney, the trustees reasonably expected Masterton to carry out his duties diligently and honestly.
10. David Le Roux has recently confirmed to Tiaan Van Schalkwyk of Gouws Attorneys, the Trust's now attorneys (as of December 2024), that the answering affidavit was prepared on Masterton's instructions using the information provided by him. Masterton attested to the answering affidavit, thus confirming his satisfaction that it was truthful and accurate. This response was given in response to queries about the answering affidavit, the reasons for which are explained later in this affidavit.
11. Given that Masterton is a chartered accountant, the trustees reasonably expected Masterton to depose to an answering affidavit in this matter, which truthfully and accurately answers the founding affidavit, based on knowledge of its affairs which he was expected to have. Not only this, but when Masterton stated important facts (such as the Trust's indebtedness to creditors, which would benefit from its sequestration application), he was expected to state

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such facts in detail and attach supporting documents. He did not in relation to at least one significant creditor, namely ABSA bank.

12. Put simply, it was expected and reasonably believed that Masterton would diligently and honestly depose to an affidavit, which accurately and convincingly sets out the Respondents' case. Importantly, as a deponent to an affidavit on behalf of the trustees and representative of the Trust, he was expected not to place his own interests above the Trust when answering the founding affidavit.
13. Recently, it has emerged that the trust and confidence placed in Masterton was misplaced. I return to this issue below.
14. Joubert Galpin Searle Inc. subsequently unofficially came on record as the Trust's attorneys during mid-2024, and on 16 September 2024, they wrote a letter to Masterton asking that their fees be paid.
15. At this stage, Masterton controlled the Trust's finances as part of an informal business rescue process connected to formal business rescue proceedings of corporate entities. Masterton did not pay JGS, which subsequently withdrew. The trustees could not make payments as they had handed Masterton control of the finances.

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16. On 15 October 2024, Whitesides Attorneys withdrew as the local attorneys of record, presumably for the same reason.
17. Le Roux Inc. subsequently formally filed its notice of withdrawal on 3 December 2024.
18. I then approached Gouws Attorneys sometime in December. I don't recall the exact date, but it was definitely before 12 December 2024, as Gouws Attorneys made attempts to advise the Applicant of our position through his attorneys on this date.
19. A copy of the correspondence delivered on 12 December 2024 is attached as annexure "KM2". It includes a request for a postponement by agreement for the reasons stated in the letter, which I request this Court have regard to in full.
20. At this stage, Gouws Attorneys did not have the complete set of the court papers and relevant documents; some were with Le Roux Inc., and other material was with Joubert Galpin Searle. Van Schalkwyk, therefore, drove to Makhanda on 12 December 2024 to peruse the court file. As Gouws Attorneys was not yet on record, he could not uplift it to make copies and could only view it at the Registrar's office. This was less than ideal and certainly not conducive to getting a grip on a complex matter with voluminous papers.

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21. Friday, December 13, 2024, was the last day of work for most businesses nationwide, including Gouws Attorneys. More importantly, after 13 December 2024, *dies non* commenced. Though this is not directly relevant to this application, almost all attorneys' firms close or operate with a skeleton staff in December after the commencement of *dies*. Apart from attorneys' firms closing, their clients go on holiday, and typically, little is achieved in late December. Therefore, it was resolved that Van Schalkwyk would make inquiries urgently in early 2025, with a view to interrogating the answering affidavit and averting the sequestration application by agreement if possible.
22. Van Schalkwyk recommenced work on Monday, 6 January 2025 and immediately delivered correspondence to Masterton. A copy is attached as annexure "KM3". The letter informed him that Van Schalkwyk was inquiring about the sequestration application and directed specific questions to him.
23. Masterton responded that same day, stating he was prepared to meet, and Van Schalkwyk made a request (on Friday, 10 January 2025) to meet Masterton.
24. Masterton agreed, and Van Schalkwyk met Masterton and Pat Pattinson (also a business rescue practitioner) on Monday, 13 January 2025, being the earliest available date. Certain aspects of the answering affidavit were queried at the meeting, which I explain below.

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25. The relevant details of the meeting (which I also attended) are as follows:

25.1. The purpose of the meeting was to understand apparent discrepancies in the answering affidavit.

25.2. Van Schalkwyk furnished Masterton and Pattinson with a detailed statement from Le Roux Inc. (attached as annexure "KM4") setting out what was done with the proceeds of the sale of an immovable property (being a farm) previously owned by the Trust referred to in paragraph [20.10] of the founding affidavit, which transferred to the purchaser on 6 December 2023, but not they provided him with a ledger addressed below.

25.3. The statement indicates that R581,505.28 was paid to Business Rescue 360 Cape (Pty) Ltd (trading as "BR360"), which Masterton and Pattinson represent.

25.4. Furthermore, the statement reflects that Le Roux Inc. paid R3,654,913.77 to JD Advisory (Pty) Ltd ("JD Advisory") from the sale proceeds. This was done at Masterton and Pattinson's instruction.

25.5. At the meeting, Masterton and Pattinson furnished Van Schalkwyk with a ledger (attached as annexure "KM5") reflecting payments JD Advisory to BR360. From the ledger, it is evident that JD Advisory then made

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three payments totalling R414,420.12 to BR360 in addition to the R581,505.28, which is alleged to be the amount that they were paid monthly for their services to the Trust and other entities being managed collectively as the Blackie Swart Familie Trust. In other words, BR360 received R581,505.28 (paid by Le Roux Inc.) from the immovable property sale and then, unbeknownst to the Trust's attorneys, subsequently received payments totalling R414,420.12 from JD Advisory.

26. The above description of what was done with the proceeds of the immovable property sale relates to what is said in paragraph [20.10] of the founding affidavit, where it is stated that the Trust did not inform Applicant what the proceeds from the sale of the property have been utilised for and that proceeds had been "spirited away to assist with the business rescue proceedings". According to the deponent to the founding affidavit, the proceeds were, on the Trust's own version, to be used to pay Applicant.
27. The answer to this, in paragraph [20] and its sub-paragraphs of the answering affidavit, denied that funds were "spirited away".
28. The response in paragraph [20.4] of the answering affidavit states:

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"I can assure this honourable court that on legal advice, every cent of the proceeds of the sale went towards paying the trust expenses, including salaries and wages, water and irrigation for the orchards; electricity to run the pumps; pesticides and fertilizers; administration fees and legal costs of the trust. In other words, the proceeds were spent in the ordinary course of business."

29. This statement leaves no room for payments to BR360 from the sale of the immovable property, but the statement and ledger reveal such payments were made.
30. After the meeting on the same day (Monday, 13 January 2025), Van Schalkwyk followed up on what was discussed by delivering an email letter asking questions arising from the meeting. A copy of the letter and cover email is attached as annexure "KM6". These questions were put in writing to obtain more formal satisfactory answers from Masterton and Pattinson. Besters Attorneys delivered an initial response on their behalf, or at least Masterton's, which was received on 22 January 2025 but then withdrew it, and since then, no further response has been received.
31. In addition to everything else said, there have been engagements by Van Schalkwyk, on behalf of the Trust, with the Applicant's attorneys and creditors to find a way forward. I do not address these here for brevity and because the response to paragraph [20.10] of the founding affidavit, the statement and

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ledger entry form the main facts upon which this postponement application is based.

THE CURRENT CIRCUMSTANCES NECESSITATE A POSTPONEMENT

32. I refer the court to annexure "FA39" to the Founding Affidavit, being a letter sent by David Le Roux of Le Roux Inc. (dated 2 December 2023). It states that Masterton would be appointed as trustee of the Trust with the following powers:

32.1. take control of the Trust and fully investigate its affairs and books of account;

32.2. ensure no creditors are preferred; and

32.3. propose a plan to the creditors that would result in a better return than would be receivable from sequestration of the Trust.

33. It is apparent from this that the trustees appointed Masterton, who, I repeat, is a chartered accountant and business rescue practitioner, in the reasonable belief that he would manage the Trust generally and, particularly, its financial affairs.

34. The letter attached as "FA39" was written approximately four months before Masterton's answering affidavit was deposed to on 29 April 2024, and the

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trustees can be forgiven for reasonably believing that Masterton would state all facts accurately and truthfully when answering the founding affidavit.

35. However, the answering affidavit is inaccurate in at least one key respect, as it appears Masterton has used his position to gain a financial advantage to the detriment of the Trust.

36. Masterton stated in paragraph 20.3 of his answering affidavit that,

"It is absolutely not true that the proceeds of the sale was 'spirited away to assist the business rescue proceedings'. Had this been this case I would have been in breach of my position duties towards the Trust. While I do wear two hats, I am acutely aware of my different roles as a BRP to the Companies and as a representative of the Trust. While it is so that the affairs of the trust and Companies overlap to such an extent that it is often difficult to separate the two. Where in doubt as to how to act, I take legal advice."

37. It is now known that Masterton was untruthful (whether mistakenly through a lack of diligence or deliberately), and the fact that funds paid by Le Roux Inc. to JD Advisory found their way into a ledger recording payments from JD Advisory to the BR360 is highly concerning.

38. JD Advisory is described on its LinkedIn profile as:

"Headquartered in Port Elizabeth but consults countrywide. We specialise in Business Rescue, Management Consulting,

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Turnaround Management and Corporate Restructuring. Our continued commitment to the values of the Turnaround Industry aids us in giving our clients the best opportunity for a second chance."

39. A copy of the profile is attached as "KM7".
40. This raises the question of why JD Advisory was paid, since it provides the same services as Masterton and Pattinson. The payments, in my mind, raise a serious red flag.
41. Masterton refers in the answering affidavit to "wearing two hats" and paragraphs [20.3] and [20.4] of the answering affidavit amply demonstrate the pitfalls of this. Masterton was required to depose to an answering affidavit uninfluenced by his personal concerns as a business rescue practitioner and any potential reputational harm to him. However, the answering affidavit was self-evidently attested to with exonerating Masterton in mind.
42. Put simply, Masterton has compromised and tainted the Respondents' case by seeking to exculpate himself. The trustees are now in the unenviable position of being committed to a version attested to by a person who, they have good reason to believe, put his interests ahead of the Trust.
43. To properly put their case before this Court, the trustees need an opportunity to interrogate everything said in the answering affidavit and supplement it or,

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if necessary, withdraw the answering affidavit and file a new answering affidavit.

THE ATTITUDE OF THE TRUST

44. The Trust has dismissed Masterton and wants his management of its affairs investigated. In an attempt to extend an olive branch, it is willing to cooperate with its creditors and appoint a mutually agreed-upon professional to conduct the investigation and report back to creditors.
45. If no agreement can be reached, then the Trust shall seek agreement that an agreed neutral third party, namely the Institute of Commercial Forensic Practitioners ("ICFP") or the South African Institute of Chartered Accountants ("SAICA") or another suitable body to appoint an investigator.
46. The advantages of this are:
 - 46.1. The Trust can determine whether it has further grounds to oppose the sequestration application;
 - 46.2. The investigation wanted by the Applicant can be carried out without provisional sequestration being necessary;

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46.3. The creditors — being at least former and possibly future business partners of the trust — can assess whether it is in their interest that the Trust be sequestrated.

47. Therefore, it is unnecessary to sequester the Trust for an investigation to be carried out.

THIS APPLICATION IS NOT A DELAYING TACTIC AND IS IN THE INTERESTS OF JUSTICE

48. The trustees understood Masterton to be truthful when he deposed to the answering affidavit and believed that his answering affidavit could be relied upon in placing our case before this Court. It is only now, with recent queries by Gouws Attorneys, that the trustees have determined to bring this application.

49. As explained above, Van Schalkwyk of Gouws Attorneys urgently attempted to investigate and determine the veracity of the answering affidavit once appointed, but cooperation has not been received.

50. There are also instances where Masterton if he had been diligent, could have prepared compelling opposition.

51. For example, the answering affidavit states that only ABSA Bank will benefit if the Trust is sequestrated. However, this statement is not expanded upon or

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supported by documentary evidence, even though it should have been. Additionally, if it is correct that only ABSA would benefit, Masterton should have ascertained their attitude toward this application. This is a highly relevant point and could have been decisive.

52. I must add that ABSA's attitude to this application is urgently being sought. However, this cannot be done overnight. The Trust's affairs are complicated, and ABSA must be given a complete appraisal and engaged so that it can determine its position.
53. Another example is the undertaking, in the answering affidavit, to file a supplementary affidavit setting out the Trust post-commencement finance ("PCF") once this was ready. Since Masterton committed to this, he must have regarded it as relevant. However, no such affidavit was filed, although I know the PCF was approved. At this stage, I do not know why it was not filed. This must be investigated and placed before the Court if it is relevant.
54. For obvious reasons, the trustees now lack trust in Masterton and Pattinson, and I wonder whether Masterton deliberately delivered weak opposition to the sequestration.
55. From the above, it is apparent that the need for a postponement is well justified. Although this postponement application is late, it is only the result of

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recent inquiries by the trustees' recently appointed attorneys.

**THERE WILL BE GREATER PREJUDICE TO THE RESPONDENTS THAN TO THE APPLICANT
IF THE POSTPONEMENT IS REFUSED**

56. The prejudice to the Trust will be significant if the application is granted in that an adverse order will be made against it in circumstances where it has been ascertained that the Trust very likely has been deprived of an opportunity to place its case before the Court.
57. The answering affidavit has already stated that only ABSA will benefit if the Trust is sequestrated; if this is correct, sequestration will not benefit the Applicant.
58. Suppose only ABSA will benefit from final sequestration. From the Applicant's perspective, there will be little point in placing the Trust in provisional sequestration, which is geared towards determining whether final sequestration should be ordered, especially as the trustees intend to cause the investigation that the Applicants desire to be carried out.
59. So, a postponement will benefit the Applicant in that once the correctness (or otherwise) of the statement regarding ABSA in the answering affidavit is determined, the Applicant will be in a better position to decide whether proceeding with the application is in its interest.

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60. I am also concerned that placing the Trust in provisional sequestration will set in motion events leading to a final sequestration. The affidavits filed to date show that the Trust has become intertwined with other entities, and understandably, a provisional sequestrator will take time to familiarise themselves with the Trust's affairs thoroughly. In such circumstances, though, they may, due to a lack of familiarity with the Trust, make conservative decisions that, ultimately, place the Trust in the position that final sequestration becomes necessary.
61. I admit that the Applicant will suffer prejudice if it has to wait further. Still, respectfully, the Respondents will suffer greater prejudice if they are denied an opportunity to properly present their case before this Court.
62. I must add that I anticipate the Applicants will answer this application by highlighting their concern that they will not receive payment. This is a legitimate concern, but pressing on with this application without determining ABSA's position is tantamount to gambling that what is said of ABSA is incorrect. Again, it will be better for ABSA's position and attitude to be determined before this application is decided.
63. So, as much as the Applicant is likely to resist this application, there is likely to be some benefit to it as well.

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THE RESPONDENTS TENDER THE WASTED COSTS

64. The Respondents tender the wasted costs of 30 January 2025.

CONCLUSION

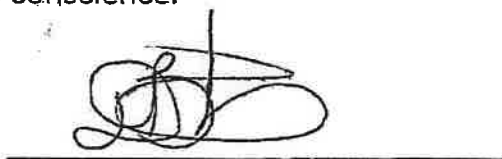
65. I humbly submit that justice demands that the Respondents be afforded further time to present their case.

WHEREFORE, I pray that the Respondents be granted a postponement on such terms as this Court deems fit.



KIRAN MOODLEY

Sworn to before me and signed in my presence at GQEBERHA this 27th day of January 2025, the deponent having acknowledged that he knows and understands the contents of this affidavit, that he had no objection to taking the prescribed oath and that he considered the prescribed oath to be binding on his conscience.



COMMISSIONER OF OATHS
DIONE BOTES
Commissioner of Oaths / Kommissaris van Ede
Practising Attorney R.S.A.
Praktiserende Prokureur R.S.A.
132 Cape Road, Mill Park
Port Elizabeth

MS
DM

"KM. (86)

RUFUS DERCKSEN INC.

ATTORNEYS / CONVEYANCERS / NOTARIES

Our Ref: H Teubes/M338

Sender's email: hesli@rufusdercksen.co.za

Your Ref: DGOUWS/TVS/SS0449

Tel: 021 886 6992

13 December 2024

TO: D.GOUWS INC. t/a GOUWS ATTORNEYS

BY EMAIL: dgouws@tvsattorneys.co.za

Dear Sir,

IN RE: MPACT OPERATIONS (PTY) LTD t/a MPACT CORRUGATED // THE
BLACKIE SWART FAMILIE TRUST

1. We refer to the above matter and your correspondence received on 12 December 2024, the contents of which have been noted without prejudice to any of our client's rights.
2. Kindly be advised that it is our instructions that our client does not agree to a postponement for the hearing scheduled for 30 January 2025. The reasons for our client's refusal to agree to a postponement is set out herein below. This correspondence, together with all previous correspondence in this matter will be brought under the attention of the Registrar and the Acting Judge President should any request for a postponement be made and our client naturally reserves its right to request an appropriate costs order.

STELLENBOSCH

E Quantum Street

Techno Park

Stellenbosch

P.O. Box 12193

Die Boord

7613

Tel: +27 (0) 21 886 6992

Fax: +27 (0) 21 886 6974

<http://www.rufusdercksen.co.za/>

Director:

Senior Associate:

Associate:

Professional Assistants:

Consultants:

Office Manager:

Daniel Jacobus Dercksen B.Jur., B.Proc.

Nicolene Müller LLB

Hesli Teubes B.Com LLB

Megan Snyman LLB

Ammaarah Ebrahim Shaik LLB

Rufus Dercksen BA (Law)

Louis Paul van Schalkwyk B.Proc

Elsmari Volschenk

Handwritten signatures and initials: "KM", "SP", "K"

3. It would unfortunately seem that your office is not fully abreast with the course of this matter till thus far. In these circumstances we place the following on record:
- 3.1. The sequestration application ("*the application*") was duly issued on 8 February 2024 and served by sheriff on 19 February 2024.
- 3.2. Your client's opposition to the application was accordingly due by 4 March 2024.
- 3.3. Your client's Notice of Opposition was only received on 14 March 2024, a mere 3 Court days prior to the matter being heard on the unopposed motion roll on 19 March 2024.
- 3.4. As such, the matter was duly removed from the unopposed motion roll by way of notice on 15 March 2024.
- 3.5. In accordance with Uniform Rule 6(d)(ii) your client had until 7 April 2024 to file its answering affidavit.
- 3.6. On or about 10 April 2024 our client provided an extension to 12:00 on 15 April 2024 for the filing of your client's answering affidavit.
- 3.7. Your client unfortunately again failed to file any answering affidavit by 15 April 2024.
- 3.8. On or about 16 April 2024, and by way of written correspondence to your client's erstwhile attorney of record, it was confirmed that no answering affidavit was received and that we accordingly hold instructions to forthwith enrol the matter accordingly:
- 3.9. By 23 April 2024 your client still failed to file its answering affidavit and consequently the matter was enrolled for 30 April 2024 on the uncontested roll.
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- 3.10. On 29 April 2024, a mere day before the matter is to be heard on the uncontested roll and our client already having briefed counsel, your client delivered its answering affidavit. This resulted in the matter being removed from the uncontested roll by way of Court Order, and a Court Order being obtained for your client to pay the wasted costs incurred by our client.
4. Subsequent to the delivery of our client's Replying Affidavit (which was duly served by way of electronic mail on your client's erstwhile attorney and per hand on your client's erstwhile correspondent attorney), our client proceeded to apply for a date for the hearing of the matter in accordance with Directive Rule 15A.
5. A hearing date for the matter was duly allocated on 7 August 2024 and the Notice of Set Down duly served on 12 August 2024.
6. Further to the above, and with specific reference to the alleged procedural and substantive gaps arising from your client's change in legal representation, we expressly place the following on record:
- 6.1. All pleadings herein (i.e., all affidavits) were duly exchanged and delivered whilst your client was duly represented by Le Roux Incorporated. Therefor, no alleged "gaps" can exist, alternatively, any such alleged "gaps" cannot be attributed to any fault on the part of our client.
- 6.2. On or about 24 July 2024, Mr Abraham Le Roux confirmed in email correspondence that Le Roux Inc. is of the intention to withdraw as attorneys of record and that a formal notice will be delivered on 25 July 2024.
- 6.3. No such notice was forthcoming and therefor on 26 July 2024 our offices requested confirmation as to when Le Roux Inc. will be withdrawing as attorney of record, and further requested confirmation as to who will be representing your client going forward.
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- 6.4. On 26 July 2024, Mr Le Roux confirmed that Mr Warren Parker from Joubert Galpin Searle Inc. will be representing your client going forward.
- 6.5. On 29 July 2024 our offices again confirmed that we have not received any formal withdrawal as attorney of record, nor any notice of appointment of attorney of record.
- 6.6. In a telephonic conversation between writer hereof and Mr Parker, Mr Parker confirmed that he had not yet had the opportunity to peruse the application and will revert once he has had the opportunity to do so.
- 6.7. Despite various further follow ups, no notice of withdrawal as attorney of record was received from Le Roux Inc, nor was any notice of appointment as attorney of record received from Joubert Galpin Searle Inc.
- 6.8. On or about 15 October 2024, approximately 2 months later, a notice of withdrawal as attorneys of record was received from Whitesides Attorneys. In this notice the following was confirmed:
- 6.8.1. As a result of Le Roux Inc. (as instructing attorney) withdrawing as attorney of record, Whitesides Attorneys is also withdrawing as attorney of record. (It should be noted that to date hereof no formal notice of withdrawal as attorney of record has been received from Le Roux Inc).
- 6.8.2. The Respondents are aware of the date of the hearing of the matter being 30 January 2025.
7. Considering the above and in response to the reasons provided in paragraph 6 of your correspondence under reply as to why a postponement is requested, we place the following on record:

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- 7.1. Your client has had ample time (from August 2024, alternatively 15 October 2024) to appoint new attorneys of record and for such attorneys to come on record. In any event your offices, with all due respect, also still have ample time to formally come on record and acquaint yourself with the complete contents of the court file and litigation history.
- 7.2. In accordance with Directive Rule 15A(a)(iii) your client's heads of argument (and practice note) is only due *"no longer than 10 days before the date allocated for the hearing of the opposed motion"*, 10 days before the date of the hearing only being 16 January 2025. This, with all due respect, is a reasonable timeframe and there exists no *bona fide* reason as to why your client will not be able to comply herewith.
8. Further, and in specific reply to paragraphs 7 and 9 of your correspondence under reply:
- 8.1. All pleadings herein have been exchanged. The matter is accordingly ready to be heard. Your client's appointment of a new attorney of record does not render the matter not ready. Your client simply cannot cry foul when it neglected to appoint new attorneys of record for an approximate period of 4 months whilst being fully acquainted with the date for the hearing of the matter.
- 8.2. There exists no reason for your client, **at this stage**, to be placed in a position to oppose the matter accordingly. We reiterate that your client **has already been placed in the position to oppose the matter accordingly and did indeed oppose the matter and file its answering affidavit.**
9. Your client will suffer no prejudice if the matter proceeds on the 30th of January 2025. To the contrary and given the nature of the application and surrounding recent circumstances (i.e., the sale of assets, the sale of shares, the sequestration of a

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trustee of the Blackie Swart Familie Trust, the changes in the trustees, the changes in the management of the trust etc.) our client stands to be severally prejudiced should this application not proceed and be further unreasonably delayed in circumstances where no *bona fide* reasons exist for the adjudication of this matter to be delayed.

10. Any interlocutory steps will be opposed, and appropriate cost orders will be sought.
11. Kindly be guided accordingly and our client's rights are expressly reserved.

YOURS FAITHFULLY


RUFUS DERCKSEN INC.

PER: H Teubes

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LP

"KM2 @ 92"

D.GOUWS INC. t/a
GOUWS ATTORNEYS

Reg. No. 2002/010765/21

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Email: civil1@dgouws.co.za (J-Scheffer)
Email: admin@dgouws.co.za (Administration Orders)
Email: Dgouws@tvsattorneys.co.za (T van Schalkwyk)

OUR REF: DGOUWS/TVS/SS0449
YOUR REF:

12 DECEMBER 2024

MESSRS
RUFUS DERCKSEN INC
EMAIL: hesli@rufusdercksen.co.za

Dear Sir/Madam,

RE: APPLICATION FOR SEQUESTRATION OF THE BLACKIE SWART FAMILIE TRUST
CASE NO: 526/2024

1. We write to you regarding the above matter, in which your client, Mpact Operations (Pty) Ltd t/a Mpact Corrugated, is the applicant, and the respondents are the trustees for the time being of the Blackie Swart Familie Trust.
2. Our firm has been instructed to act on behalf of the respondents following the withdrawal of their previous attorneys of record. While we have not yet filed our formal notice of appointment, we intend to do so shortly.
3. Upon perusal of the court file, we have established the following:


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- 3.1 Your client has already filed its practice note and heads of argument.
- 3.2 Replying papers have been filed in the matter.
- 3.3 The respondents' previous attorneys have not filed heads of argument prior to their withdrawal.
4. We also wish to bring to your attention that we are not currently in possession of the replying papers, the practice note, or your client's heads of argument, as our perusal of the file was limited to determining the procedural posture of the matter.
5. In light of the above, we respectfully request your client's consent to a postponement of the hearing scheduled for 30 January 2025.
6. This postponement will allow us to;
 - 6.1 Formally come on record as attorneys for the respondents;
 - 6.2 Obtain and acquaint ourselves with the complete contents of the court file and the litigation history;
 - 6.3 Consider whether it is necessary to file supplementary affidavits; and
 - 6.4 Prepare and file heads of argument on behalf of the respondents within a reasonable timeframe.
7. Alternatively, if your client is not willing to consent to the proposed postponement, we will proceed to draft a request to the Registrar seeking guidance and possible directives from the Acting Judge President as a point of departure. We are of the view that the matter is not ready to be heard due to the procedural and

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[Signature]
[Signature]

substantive gaps arising from the change in legal representation for the respondents.

8. We kindly request your client's consideration herein in light of the circumstances. Kindly confirm your client's position at your earliest convenience to avoid unnecessary interlocutory steps.
9. Further take note that that the respondents' intentions are not to delay the matter unreasonably, with the only objective to be placed in a position to opposed the matter accordingly.

We look forward to your response.

Warm regards

Tiaan van Schalkwyk

(sent electronically)

DIRECTOR: DANIE GOUWS
ASSOCIATES: JEANNE SCHEFFER, TIAAN VAN SCHALKWYK
CANDIDATE ATTORNEY: O JIKELA, A NGCONGOLO



12 KM3 95

dgouws@tvsattorneys.co.za

From: dgouws@tvsattorneys.co.za
Sent: 06 January 2025 10:20
To: 'David Masterton | Business Rescue 360'
Cc: 'Pat Pattinson | Business Rescue 360'
Subject: Re: Mpact Operations (Pty) Ltd v Blackie Swart Familie Trust (Case No. 526/2024)

Dear Mr Masterton,

May I also take this opportunity to wish you a very Happy New Year.

I am currently reviewing the matter on behalf of the Blackie Swart Familie Trust in preparation for the liquidation application scheduled for 30 January 2025. Upon examining the answering affidavit, you drafted on behalf of the Trust, I noted certain statements that require clarification. I would greatly appreciate your assistance in addressing the following:

Paragraph 7.8.9 (Farm Machinery and Equipment):

You mention tractors, trucks, and other farming equipment owned by the Trust. Could you kindly clarify whether all the machinery and equipment are owned by the Trust or only specific items? If the latter, are you in possession of a list of such machinery and equipment? If so, may I request a copy of this list for our records?

Paragraph 20 (Proceeds of the Sale):

You refer to a transfer registered on 6 December 2023 and state that the proceeds were utilised for Trust expenses, such as salaries, wages, water, electricity, administration fees, and legal costs. Furthermore, you indicate that no proceeds were used to assist the business rescue proceedings.

1. Are you in possession of a detailed breakdown of the proceeds that supports this statement?
2. If not, could you elaborate on the basis of your knowledge in making this assertion?
3. If you do have the breakdown, may I kindly request a copy for review?

In the alternative, we can arrange a meeting where I can provide the answering affidavit for you to revisit the position, as I understand that it was drafted in April 2024. I would be grateful if you could provide clarity on the above points or confirm your availability for a meeting at your earliest convenience, as we aim to finalise preparations ahead of the court date.

I look forward to your response.

Warm Regards

TIAAN VAN SCHALKWYK
Associate
D GOUWS INC t/a GOUWS ATTORNEYS
136 CAPE ROAD
MILL PARK
GQEERHA
TEL: 041 373 0037
EMAIL: dgouws@tvsattorneys.co.za

CONFIDENTIALITY CAUTION:

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If you have received this communication in error please note that it is intended for the addressee only, is privileged and confidential, and dissemination or copying is prohibited. Please notify us immediately by telephone and/or return the original message to the above address.

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DESCRIPTION	DEBIT	CREDIT	VAT @ 15%
Purchase price		8 500 000,00	
Deposit representing share of Blackie Swart Familie Trust account at Lower Sundays River Water User Association (LSRWUA)		10 517,90	
✓ (P) Paid LSRWUA	10 517,90		
Blackie Swart Familie Trust : GS Investment Account Number 9023603396:			
Accrued interest on investment after deductions have been taken into account (LPFF R3 026,09 and other fees R4 197,94)		50 271,94	
Investment LPFF		3 026,09	
Note: Accrued interest of R50.271,94 is included in the total amount of R3 654 913,77 as indicated below on closure of the investment account			
Paid Blackie Swart Familie Trust in terms of Loan Agreement Boertjie Nel Familie Trust / Blackie Swart Familie Trust	1 400 000,00		
✓ (P) Paid ESKOM HOLDINGS SOC LTD Account Number 6416945065	72 756,67		
✓ (P) Paid ESKOM HOLDINGS SOC LTD Account Number 5350141205	407 238,81		
✓ (P) Paid ESKOM HOLDINGS SOC LTD Account Number 6760738308	25 995,53		
✓ (P) Paid Sundays River Valley Municipality Account Number 25042515	22 598,00		
✓ (P) Paid Sundays River Valley Municipality Account Number 25042514	20 070,70		
Paid Vindex Advisory	17 250,00		
Paid Lekkerbly Boerdery Pty Ltd (Boertjie Nel Familie Trust) - interest in terms of the loan agreement	19 958,90		
Paid Business Rescue 360 Pty Ltd	581 505,28		
Paid Blackie Swart Familie Trust	626 180,47		
Paid LOMBARD INSURANCE COMPANY PTY LTD for Proximitas Inv 640357	91 489,90		
Paid LOMBARD INSURANCE COMPANY PTY LTD - Invoice No. 640347	64 705,88		
Paid LOMBARD INSURANCE COMPANY PTY LTD - Invoice No. 640362	64 705,88		
Paid LOMBARD INSURANCE COMPANY PTY LTD - Invoice No. 640350	64 705,88		
✓ (P) Paid Sundays River Valley Municipality re transfer Blackie Swart Familie Trust / Geoff Muller Familie Trust in order to obtain rates clearance certificate for registration purposes as per instructions received from Business Rescue 360	60 922,26		

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31.12.00

Paid Sundays River Valley Municipality re transfer Blackie Swart Familie Trust / Geoff Muller Familie Trust in order to obtain rates clearance certificate for registration purposes as per instructions received from Business Rescue 360

61 105.67

Le Roux Inc Fee FICA, courier, deeds office searches, postages and petties

2 000.00

300.00

Paid Blackie Swart Familie Trust upon instructions of Business Rescue 360 to pay wages

1 294 894.43

Paid JD ADVISORY SA (PTY) LTD balance on closure of CS Investment No. 9023603396

3 654 913.77

R8 563 515.93

• R8 563 815.93

300.00

- R0.00

DEBIT + VAT less CREDIT

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dgouws@tvsattorneys.co.za

From: dgouws@tvsattorneys.co.za
Sent: 15 January 2025 09:51
To: 'David Masterton | Business Rescue 360'; 'Pat Pattinson | Business Rescue 360'
Subject: RE: BLACKIE SWART FAMILIE TRUST // BR360
Attachments: LOD 15.01.25 BR360 Consolidation.pdf; LOD 15.01.25 BR360.pdf; LOD PQCA 15.01.25 BR360.pdf

Dear Mr Masterton and Mr Patterson.

Kindly find attached hereto legal correspondence for your attention.

We trust that the above is in order.

Warm Regards

TIAAN VAN SCHALKWYK
Associate
D GOUWS INC t/a GOUWS ATTORNEYS
136 CAPE ROAD
MILL PARK
GQEERHA
TEL: 041 373 0037
EMAIL: dgouws@tvsattorneys.co.za

CONFIDENTIALITY CAUTION:

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D.GOUWS INC. t/a
GOUWS ATTORNEYS

Reg. No. 2002/010765/21

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Email: civil1@dgouws.co.za (J Scheffer)
Email: admin@dgouws.co.za (Administration Orders)
Email: dgouws@tvsattorneys.co.za (T van Schalkwyk)

OUR REF: TVS/SS0449

15 JANUARY 2025

DAVID MASTERTON
BR360
BUILDING 5, WATERFRONT BUSINESS PARK
9 POMMERN STREET
HUMERAIL

SUBJECT: REQUEST FOR JUSTIFICATION OF THE CONSOLIDATION OF BUSINESS
RESCUE PROCEEDINGS

Dear Mr Masterton,

1. We write to you on behalf of our client, the Blackie Swart Familie Trust, regarding the purported consolidation of the business rescue proceedings involving the Trust, Proximitas Investments, Tracto Investments and other associated entities (collectively referred to as "the Entities").
2. It is known that the business rescue proceedings of the Entities have been consolidated into a single structure under your administration. We note with concern that:
 - 2.1 The Companies Act explicitly provides for business rescue on a per-entity basis, recognising the distinct legal personality of each

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company or close corporation. Consolidation of business rescue proceedings is not expressly permitted under the Act, particularly where one of the entities involved, such as the Blackie Swart Familie Trust, does not qualify as a "company" under Section 128(1)(b).

2.2 The consolidation of proceedings has the potential to prejudice creditors of individual entities, as it may dilute their voting rights and financial recovery prospects. This raises questions about the fairness and transparency of the process.

2.3 We are unaware of any judicial oversight or approval having been sought or obtained for this consolidation.

3. The consolidation of the Entities' business rescue proceedings may have resulted in prejudice to creditors in several ways:

3.1 Creditors of entities with stronger financial positions or larger claims have had their voting interests diluted when combined with creditors of other entities. This undermines the proportional representation of creditors as prescribed in Section 145 of the Act.

3.2 The entire business rescue process appears to have been administered through a single bank account held by Proximitas Investments. This pooling of funds has caused a lack of transparency regarding the allocation of resources, the payment of creditors, and the overall financial management of the Entities.

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3.3 It is apparent that certain entities within the consolidated structure may have been insolvent to such an extent that liquidation would have been the most appropriate remedy. However, due to the consolidation, liquidation proceedings were delayed, which:

- 3.3.1 Allowed the financial distress of those entities to worsen, further diminishing the potential recovery for creditors.
- 3.3.2 Created an artificial perception of solvency and viability for entities that would otherwise have been liquidated earlier.
- 3.3.3 The Blackie Swart Familie Trust's assets have seemingly been utilised to support transactions or operations of other entities during the business rescue process. This constitutes a further potential breach of fiduciary duties and raises questions about the BRPs' compliance with their obligations under Section 140(1)(d) of the Act to balance the rights and interests of all affected persons.

4. The consolidation and subsequent administration of the business rescue proceedings could give rise to several legal challenges, including:

- 4.1 If the consolidation is found to be unlawful, any business rescue plan adopted based on this structure may be rendered invalid, as it would not comply with the statutory framework.
- 4.2 The pooling of funds and improper inclusion of the Trust (initially) may amount to a breach of the duties owed by the BRPs under Section 140 of the Act.

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4.3 Creditors may argue that their recoveries have been unfairly diminished due to the delay in liquidation proceedings and may seek judicial intervention to challenge the validity of the proceedings.

5. In light of the above, we request that you urgently provide a detailed explanation addressing the following:

5.1 The statutory and legal basis for the consolidation of the business rescue proceedings of the Entities.

5.2 Whether judicial authorisation was sought and obtained for the consolidation, and if so, a copy of the court order or approval.

5.3 The rationale behind managing the consolidated proceedings through Proximitas Investments' bank account and how this has impacted the allocation of funds and the rights of creditors.

5.4 The steps taken to ensure the fairness and transparency of the consolidated proceedings, particularly in balancing the interests of creditors and affected persons of each individual entity.

5.5 Whether the possibility of liquidating certain entities was considered, and if so, why such liquidation was delayed or not pursued.

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6. We demand to receive a satisfactory response within seven (7) calendar days, our client's rights are reserved.

We trust that this matter will be treated with the urgency it deserves and look forward to your prompt response.

Yours faithfully,

TIAAN VAN SCHALKWYK

(Electronically sent)

DIRECTOR: DANIE GOUWS
ASSOCIATES: JEANNE SCHEFFER, TIAAN VAN SCHALKWYK
CONSULTANT: DRIES BREYTENBACH,
CANDIDATE ATTORNEY: O JIKELA, A NGCONGOLO

us [Signature]
[Signature]

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D.GOUWS INC. t/a
GOUWS ATTORNEYS

Reg. No. 2002/010765/21

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Email: admin@dgouws.co.za (Administration Orders)
Email: Dgouws@tvsattorneys.co.za (T van Schalkwyk)

OUR REF: TVS/SS0449

15 JANUARY 2025

DAVID MASTERTON
BR360
BUILDING 5, WATERFRONT BUSINESS PARK
9 POMMERN STREET
HUMERAIL

SUBJECT: LEGAL CONCERNS REGARDING ALLEGED DISPOSITION OF TRUST
ASSETS

Dear Mr Masterton,

1. We write on behalf of the Blackie Swart Familie Trust, we are specifically concerned about:

1.1 In terms of Section 29 and Section 30 of the Insolvency Act 24 of 1936, any disposition made within six months of sequestration may be challenged if it results in undue preference or prejudice to other creditors.

1.2 Trust property is governed by the Trust Property Control Act 57 of 1988 and must remain separate from the assets of other entities.

We are concerned that trust property may have been improperly

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utilised in connection with the business rescue proceedings of Proximitas Investments, Blue Crane, Tracto Investments and Steenbokvlakte,

2. In light of the above, we urgently request that you:
 - 2.1 Advise on whether any trust property was utilised in the business rescue process.
 - 2.2 Provide a detailed account of any possible and/or alleged disposition of the trust's assets.
 - 2.3 Confirm whether proceeds from any sale have been used to settle creditors connected to any entities under your administration.
3. We demand to receive a satisfactory response within seven (7) calendar days, our client's rights are reserved.

We trust that this matter will be treated with the urgency it deserves and look forward to your prompt response.

Yours faithfully,

TIAAN VAN SCHALKWYK

(Electronically sent)

DIRECTOR: DANIE GOUWS
ASSOCIATES: JEANNE SCHEFFER, TIAAN VAN SCHALKWYK
CONSULTANT: DRIES BREYTENBACH,
CANDIDATE ATTORNEY: O JIKELA, A NGCONGOLO

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KQ

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D.GOUWS INC. t/a
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Reg. No. 2002/010765/21

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Email: civil1@dgouws.co.za (J Scheffer)
Email: admin@dgouws.co.za (Administration Orders)
Email: Dgouws@tvsattorneys.co.za (T van Schalkwyk)

OUR REF: TVS/SS0449

15 JANUARY 2025

DAVID MASTERTON
BR360
BUILDING 5, WATERFRONT BUSINESS PARK
9 POMMERN STREET
HUMERAIL

SUBJECT: DISCUSSION REGARDING ALLEGATIONS OF FINANCIAL
DISCREPANCIES

Dear Mr Masterton,

1. We write to you on behalf of our client, the Blackie Swart Familie Trust, regarding serious concerns that have come to light in connection with the ongoing business rescue proceedings and associated legal affidavits.
2. In your answering affidavit submitted in response to the sequestration application, it was stated under oath that no monies were utilised in any transaction for the business rescue proceedings inclusive of fees.
3. However, it has now come to our attention that certain payments were made to BR360 during the course of these proceedings. These payments appears to directly contradict the statement contained in your affidavit.

Handwritten signatures and initials:
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4. As you are aware, if one knowingly make a false statement under oath, same constitutes perjury under South African law, as per Section 319 of the Criminal Procedure Act 51 of 1977. If substantiated, this would constitute a serious criminal offence that undermines the integrity of the legal proceedings.
5. In addition to the potential criminal implications, we must draw your attention to the reporting obligations under Section 34 of the Prevention and Combating of Corrupt Activities Act 12 of 2004 (POCA).
6. We believe it is prudent to provide you with an opportunity to address this matter directly. Specifically, we invite you to:
 - 6.1 Advise on whether there were any payment(s) made to BR360 relating to fees and/or for the purposes of business rescue proceedings.
 - 6.2 Clarify any discrepancies between any payment(s) and the statement made in your affidavit.
 - 6.3 Provide any supporting documentation or explanation regarding the utilisation of funds in the proceedings.
7. We hereby demand a satisfactory response or explanation within seven (7) calendar days, our client's reserves their rights accordingly.

We trust that you will treat this matter with the seriousness it deserves and look forward to your prompt response.

Handwritten signature and initials in the bottom right corner.

110

Warm regards

TIAAN VAN SCHALKWYK

(Electronically sent)

DIRECTOR: DANIE GOUWS
ASSOCIATES: JEANNE SCHEFFER, TIAAN VAN SCHALKWYK
CONSULTANT: DRIES BREYTENBACH,
CANDIDATE ATTORNEY: O JIKELA, A NGCONGOLO

Handwritten signatures and initials, including "DM", "K", and a stylized "S" or "D".

KM-114



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About us

Our firm is headquartered in Port Elizabeth but consults countrywide. We specialise in Business Rescue, Management Consulting, Turnaround Management and Corporate Restructuring. Our continued commitment to the values of the Turnaround Industry aids us in giving our clients the best opportunity for a second chance

Website

<https://jdadvisory.biz/>

Industry

Business Consulting and Services

Company size

1 employee

Headquarters

Port Elizabeth, Eastern Cape

KM-114

IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)

Case no.: 526/2024

In the matter between:

MPACT OPERATIONS (PTY) LTD

Applicant

t/a MPACT CORRUGATED

and

MARTINUS SWART N.O.

First Respondent

JOHANNA CATHERINA SWART N.O.

Second Respondent

FRANCOIS PETRUS STRYDOM N.O.

Third Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

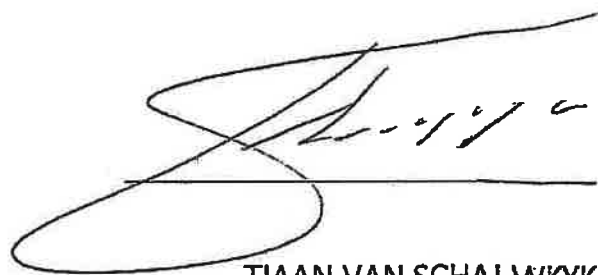
TIAAN VAN SCHALKWYK

do make an oath and say that:

1. I am an adult male, employed by D Gouws Inc situated at 136 Cape Road, Mill Park Gqeberha.



2. I am duly authorised to depose to this Affidavit as the attorney of record for the Applicants/Respondents, the contents of which is within my personal knowledge, unless the context indicates otherwise and are true and correct.
3. I have read the Founding Affidavit to the application for postponement deposed by Kiran Moodley on the 27th of January 2025 and confirm the correctness of the allegations contained therein pertaining to myself.



TIAAN VAN SCHALWKYK

Sworn to before me and signed in my presence at GQEBERHA this 27th day of January 2025, the deponent having acknowledged that he knows and understands the contents of this affidavit, that he had no objection to taking the prescribed oath and that he considered the prescribed oath to be binding on his conscience.



COMMISSIONER OF OATHS

DIONE BOTES

Commissioner of Oaths / Kommissaris van Ede
Practising Attorney R.S.A.
Praktiserende Prokureur R.S.A
132 Cape Road, Mill Park
Port Elizabeth



"DM-8"

(114)

IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)

CASE NO: 526/2024

In the matter between:

MPACT OPERATIONS (PTY) LTD

t/a MPACT CORRUGATED

(Respondent in the postponement application)

Applicant

And

MARTINUS SWART N.O.

JOHANNA CATHERINA SWART N.O.

FRANCOIS PETRUS STRYDOM N.O.

(Applicants in the postponement application)

First Respondent

Second Respondent

Third Respondent

SUPPLEMENTARY AFFIDAVIT

I, the undersigned

DAVID JOHN MASTERTON

do hereby make oath and state that:

1.

I am an adult male Chartered Accountant and Business Rescue Practitioner. I am a director of Business Rescue 360 (Pty) Ltd t/a BR360 which company specialises in business rescue. For the reasons set out below, I am now forced to depose to an affidavit in these proceedings.

[Handwritten signatures and initials]

(5)

2

2.

The facts contained herein are within my personal knowledge unless otherwise stated or apparent from the context and are both true and correct. Where such facts are not within my personal knowledge, I verily believe them to be true and correct.

3.

On or about the 28th of January 2025 it came to my notice that Mr Kiran Moodley purporting to act as the management representative of the Blackie Swart Family Trust (the Respondent Trust) deposed to an affidavit in support of an application for the postponement of the sequestration proceedings as against the Blackie Swart Family Trust. Therein he correctly expressed his concerns.

4.

From the outset I deny that the content of his affidavit is true and correct and more particularly I submit that the deponent has been selective of the facts he places before this Honourable Court and the context in which certain events took place. I depose to this affidavit as certain of the allegations made therein are extremely defamatory and untrue.

5.

I do not intend to deal with each and every allegation as contained in the founding affidavit deposed to by Mr Kiran Moodley but feel compelled to draw certain inaccuracies in the affidavit and the incorrect impression that the deponent attempts to create to this Honourable Court's attention. I respectfully submit that it was done intentionally.

AM
VB
AM 18

6.

Is to be noted that the power of attorney granted to me to act for and on behalf of the Respondent Trust was granted on or about the 19th of January 2024 and withdrawn on or about 22 July 2024. Turning to the events what lead up to the opposition of the application for the sequestration and the instructions to attorney David le Roux, I confirm that both Mr David and Abraham le Roux impressed on me that I would be negligent in not opposing the application for sequestration of the Trust. At the time of the consultation with them, I was convinced that the Trust was objectively solvent in that the assets exceeded the liabilities but that it was most definitely not in a position to pay its debts as and when they became due and thus commercially insolvent. I am not a legal practitioner but have sufficient knowledge to know the difference between factual and commercial insolvency. I am advised that the Respondent Trust has waived the privilege of what transpired between myself and its attorneys given the allegations made against me. I attach hereto as Annexure "DM-1" an email dated 14 February 2024 addressed to me by attorney David le Roux subsequent to me transmitting the application to them.

7.

The averment as contained in paragraph 10 of the deponent's affidavit that attorney David le Roux prepared the affidavit strictly on my instructions, is factually incorrect. I confirm that at the time of the consultations with both attorneys Abraham and David le Roux as well as with their senior counsel appointed, I was fully transparent and declared everything that I was aware of at the time. The mere fact that reference is made to commercial insolvency confirms that the attorneys were aware and I informed them of all the debts of the company. I also wrote to the trustees expressing concerns and attach an email dated 12 April 2024 hereto as Annexure "DM-2" which was drafted by the Trust's attorney. I sent it to the trustees as is evidenced by Annexure "DM-3".

DM VB
DM 18

8.

It is correct that David le Roux consulted with me but was the Trust's attorney long before I became involved and is fully aware of its position. He attended all the creditors meetings until his mandate was terminated by the Trust. Payments were made by Le Roux who instructed counsel and was the attorney who assisted counsel to draft the opposition. What is more, Le Roux was provided with all the details, particularly the debts per email which is attached hereto as Annexure "DM-4" and "DM-5" containing the summary of assets and liabilities as they were then known. The Absa debt is included therein.

9.

Another aspect to be specifically addressed are the allegations contained in paragraph 14 to 17 of the deponent's affidavit. It is correct that Joubert Galpin & Searle Attorneys requested payment of their fees. It is to be noted that this request was made after my authority to act and power of attorney was withdrawn, which was 22 July 2024. At that time I did not control the Trust finances and the allegation is untruthful at best. To attempt to blame the withdrawal of the attorneys on my failure to pay their fees, is misplaced.

10.

In respect of the allegations as contained in paragraph 22 to 31, I wish to respond thereto hereunder. Anything inconsistent with the version as set out hereunder is vehemently denied.

10.1 I have fully responded to the letters of attorney Van Schalkwyk and attach hereto as Annexure "DM-6" the response transmitted by my attorney of record thereto

Handwritten signatures and initials:
 DM
 VB
 DM

- 10.2 The deponent however fails to mention that there was a meeting with Messrs Pattinson, Van Schalkwyk and Bester on the 22nd of January wherein the content of the letters and the request as contained in the letters was discussed. It was drawn to the attention of Van Schalkwyk that all information sought was made available to all the previous attorneys as referred to in Annexure "DM-6" whereafter Van Schalkwyk addressed a letter withdrawing the letters. It is dealt with in the response.
- 10.3 The following day, attorney Van Schalkwyk again insisted on an answer thereto. My attorney of record was engaged in a matter in Cape Town and informed attorney Van Schalkwyk that he would only respond thereto later.
- 10.4 It is true that an amount of R581 505.28 was paid to BR360. This was in respect of fees and expenses incurred from the date of engagement being November 2023 to the date of the payment. That was done on or about the 20th of December 2023. At that point in time I was unaware of the Trust and its attorneys Le Roux's undertakings towards the Applicant herein. I wish to also point out that the instructions emanated from Marike Swart at the time and related to not only the affairs of the Trust but also the companies in which it held the shares. The invoices thus paid was for the entire group and for which each jointly and severally undertook to pay the costs of rescue
- 10.5 The payment of R3 654 913.77 was made to JD Advisory Services as an entity to assist with the administration of the rescue proceedings and due to the fact that the Trust had no transactional account into which the funds could be paid. They were at the time appointed in two of the groups companies, being Tracto Trading and Steenbokvlakte Ontwikkelings (Pty) Ltd as rescue practitioner

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10.6 The three payments totalling R414 420.12 was only made two months later and on 19 February 2024 and which was for inter alia the costs of the valuation of the various properties including the Trusts and the rescue fees incurred in February. These expenses were all in the normal course of business of the Trust and made with the full knowledge of the trustees. To question it a year later and after three sets of attorneys, smacks of ulterior intentions.

10.7 When I stated in my affidavit that funds were not spirited away, the intention was clearly that it was not misused. Annexure "KM5" states clearly what the funds were used for and in that respect, it is clear that expenses such as wages were also paid. All the transactions on Annexure "KM5" can be explained in due course. I however do not wish to burden the Honourable Court with the details thereof as they are irrelevant for the purposes of the postponement. It is however pertinent to state that there has been 100% transparency with the Respondent Trust in respect of these expenses

11.

I am aware that Mr Moodley became a director of Proximitas. It was due to the fact that Mr Johan Swart had resigned and the Trust as shareholder nominated Mr Moodley. He is indeed desirous of taking control of the empire and the rescue plan was written around an offer presented by him. He has unfortunately not been able to raise the funds and the entire property portfolio of Proximitas will be sold by public auction on 27 February 2025.

AM
VB
AM

12.

An aspect of concern is that Mr Moodley has confirmed to me that he has purchased the shares in Proximitas that the Trust owns. I assume it is through some or other entity which means the Trust has disposed of assets during the pending proceedings.

13.

In summary I deny that I had been untruthful or dishonest and the attempt by the deponent to paint me in a bad light purely for the purpose of obtaining a postponement, is purely the execution of Van Schalkwyk's threat made on the 13th of January 2025 that he would throw me under the bus in order to obtain a postponement. It appears that he has elected to throw me under the bus and not attorney David le Roux.

14.

I have read the opposing affidavit of Mr James Bruce Liston and confirm the content thereof insofar as it relates to me.

**DAVID JOHN MASTERTON**

SIGNED AND SWORN before me at GQEBERHA on this 29th day of JANUARY 2025, the Deponent having acknowledged that he/she knows and understands the contents of this Affidavit, which is deposed to in accordance with the regulations governing the administration of an oath as more fully set out in Government Notice R1258 of 21 July 1972, as amended by Government Notice 1648 dated 19 August 1977 and Government Notice 903 dated 10 July 1998.

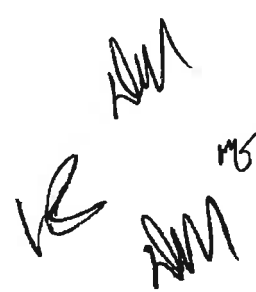


COMMISSIONER OF OATHS

VIAN CHARL TEE

LLB (STELL)

Commissioner of Oaths • Practising Attorney
Strauss Daly Place, 35 Pickering Street,
Newton Park, Port Elizabeth, 6045



122

DM-1

Tuesday, January 28, 2025 at 17:10:02 South Africa Standard Time

Subject: FW: MPACT // BLACKIE SWART FAMILIE TRUST
Date: Tuesday, 28 January 2025 at 17:08:04 South Africa Standard Time
From: David Masterton | Business Rescue 360
To: Paul Bester
Attachments: image001.jpg, image002.jpg

And?

From: David Le Roux <david@lrxi.co.za>
Sent: Wednesday, 14 February 2024 07:38
To: Pat Pattinson | Business Rescue 360 <Patp@businessrescue360.co.za>; David Masterton | Business Rescue 360 <Davidm@businessrescue360.co.za>
Cc: Jaco Durandt | | Business Rescue 360 <jacod@businessrescue360.co.za>
Subject: RE: MPACT // BLACKIE SWART FAMILIE TRUST

Dear Pat and David,

The sequestration application refers.

The 10 day period for filing a notice of intention to defend will only start to run once the application is served by the Sheriff, which gives us a bit of extra time to consider a strategy. My suggestion is that we brief counsel as soon as possible in order to get an independent view on the merits of an opposition. I am skeptical about our chances of successfully opposing this application.

I assume that you have engaged with Mpact's attorneys and there is no chance of reaching an agreement?

Regards,
David le Roux



LE ROUX INC
ATTORNEYS

101 Cape Road, Mount Croix, Port Elizabeth, 6001 | Private Bag X60575, Greenacres, 6057
Tel 041 374 1400 | Mobile 083 459 5875 | E-mail david@lrxi.co.za

Le Roux (Uitenhage & PE) Incorporated – Reg No 2003/000269/21 | Est. 1926

Directors Abraham le Roux BA LLB (Stell); David le Roux BA LLB (Stell)
Candidate Attorney Siphesihle January BA (Hons) LLB (Rhodes)

Handwritten signatures and initials: DM, VB, and others.

123

DM

Tuesday, January 28, 2025 at 12:18:58 South Africa Standard Time

Subject: FW: Mpact v Blackie Swart Familie Trust
Date: Tuesday, 28 January 2025 at 12:02:13 South Africa Standard Time
From: David Masterton | Business Rescue 360
To: Paul Bester, Pat Pattinson | Business Rescue 360

From: David Le Roux <david@lrxi.co.za>
Sent: Friday, 12 April 2024 10:16
To: David Masterton | Business Rescue 360 <Davidm@businessrescue360.co.za>
Subject: Mpact v Blackie Swart Familie Trust

Morning David,

Herewith my draft email that you can send to Fanie and Johann.

In my view this will be more than sufficient.

Dear Fanie and Johann,

We have opposed the sequestration application brought by Mpact and our senior counsel is in the process of preparing our opposing affidavit. The advice we received is that it will be a very difficult case to fight, but we intend to put forward an argument that it is just and equitable not to sequester the trust due to its important role in the Blackie Swart Family Group. If the trust is sequestered it will not only prejudice the other entities but also the entire group of creditors.

Litigation is risky and very expensive, and there is no guarantee that our opposition will be successful. In my view we must explore a settlement with Mpact. We are at the start of the harvest and it is much easier now to commit to a payment plan as the fruit is being shipped.

I accept that the trust is commercially insolvent, meaning that it cannot meet its financial obligations and repay its debts when they are due. Due to its insolvent position there are inherent risks in proceeding with the business of the trust. This is however unavoidable. The trust play an integral role in the entire group. All the employees are employed by and paid by the trust. The trust owns a large portion of the developed land and the citrus supplied by the trust forms a large part of the harvest. Without this the entire group and business rescue will likely fail. A further issue is that although the account with Mpact is held by the trust, the debt relates to packing material that was purchased for the benefit of the entire group. Technically, Proximitas and Tracto Trading should be responsible for a large portion of the debt.

It is for all these reasons that I want to approach Mpact with a payment proposal. As the current trustees, I must have your support in this process. Will you please confirm in writing that you are in agreement with my strategy and that I may proceed to engage with Mpact?

13
DM
MS

(124)

17/11/25

Tuesday, January 28, 2025 at 12:51:13 South Africa Standard Time

Subject: FW: Mpact v Blackie Swart Familie Trust
Date: Tuesday, 28 January 2025 at 12:50:05 South Africa Standard Time
From: David Masterton | Business Rescue 360
To: Paul Bester

From: David Masterton | Business Rescue 360
Sent: Friday, 12 April 2024 16:02
To: waterkloof15@gmail.com; Fanie Strydom <fanie@strydompartnerspe.com>
Subject: FW: Mpact v Blackie Swart Familie Trust

Dear Fanie and Johann,

We have opposed the sequestration application brought by Mpact and our senior counsel is in the process of preparing our opposing affidavit. The advice we received is that it will be a very difficult case to fight, but we intend to put forward an argument that it is just and equitable not to sequester the trust due to its important role in the Blackie Swart Family Group. If the trust is sequestered it will not only prejudice the other entities but also the entire group of creditors.

Litigation is risky and very expensive, and there is no guarantee that our opposition will be successful. In my view we must explore a settlement with Mpact. We are at the start of the harvest and it is much easier now to commit to a payment plan as the fruit is being shipped.

I accept that the trust is commercially insolvent, meaning that it cannot meet its financial obligations and repay its debts when they are due. Due to its insolvent position there are inherent risks in proceeding with the business of the trust. This is however unavoidable. The trust plays an integral role in the entire group. All the employees are employed by and paid by the trust. The trust owns a large portion of the developed land and the citrus supplied by the trust forms a large part of the harvest. Without this the entire group and business rescue will likely fail. A further issue is that although the account with Mpact is held by the trust, the debt relates to packing material that was purchased for the benefit of the entire group. Technically, Proximitas and Tracto Trading should be responsible for a large portion of the debt.

It is for all these reasons that I want to approach Mpact with a payment proposal. As the current trustees, I must have your support in this process. Will you please confirm in writing that you are in agreement with my strategy and that I may proceed to engage with Mpact?

Kind regards
David

AM
VB
AM

125

Tuesday, January 28, 2025 at 19:25:18 South Africa Standard Time

Subject: FW: ABSA Q&A
Date: Tuesday, 28 January 2025 at 13:02:59 South Africa Standard Time
From: Pat Pattinson | Business Rescue 360
To: Paul Bester
Attachments: Annexure 4 - Fanie Email re no permission to act on his behalf.pdf, Blackie Swart - BR - Consolidated Claim Form.xlsx

From: Pat Pattinson | Business Rescue 360 <Patp@businessrescue360.co.za>
Date: Wednesday, 24 April 2024 at 15:51
To: abraham@lrxi.co.za <abraham@lrxi.co.za>, 'David Le Roux' <david@lrxi.co.za>
Cc: David Masterton | Business Rescue 360 <Davidm@businessrescue360.co.za>
Subject: Re: ABSA Q&A

From: Abraham Le Roux <abraham@lrxi.co.za>
Date: Wednesday, 24 April 2024 at 12:09
To: Pat Pattinson | Business Rescue 360 <Patp@businessrescue360.co.za>, 'David Le Roux' <david@lrxi.co.za>
Cc: David Masterton | Business Rescue 360 <Davidm@businessrescue360.co.za>
Subject: RE: ABSA Q&A

Dear Pat,

Nick has requested that you provide Annexure 4. It was not included in the documents attached to your e-mail.

Regards
Abraham

From: Pat Pattinson | Business Rescue 360 <Patp@businessrescue360.co.za>
Sent: Wednesday, April 24, 2024 9:51 AM
To: David Le Roux <david@lrxi.co.za>; abraham@lrxi.co.za
Cc: David Masterton | Business Rescue 360 <Davidm@businessrescue360.co.za>
Subject: ABSA Q&A

DM
PB
VB
AM

127

12/1/25

Tuesday, January 28, 2025 at 17:24:33 South Africa Standard Time

Subject: FW: BSFT
Date: Tuesday, 28 January 2025 at 13:09:11 South Africa Standard Time
From: Pat Pattinson | Business Rescue 360
To: Paul Bester
Attachments: Image001.jpg, Nick - Blackie Swart - BR - Consolidated Claim Form.pdf, Nick - Blackie Swart - BR - Creditors.pdf

From: Pat Pattinson | Business Rescue 360 <Patp@businessrescue360.co.za>
Date: Thursday, 25 April 2024 at 14:00
To: nikol@isat.co.za <nikol@isat.co.za>
Subject: BSFT

Good afternoon Nick

Please find attached as per your request, and feel free to let me know if you need anything else.

Regards

PAT PATTINSON | SENIOR BUSINESS RESCUE PRACTITIONER

BR360
INTEGRATED BUSINESS RESCUE

Building 5 | Waterfront Business Park | 9 Pommern Street | Humeral | Port Elizabeth | 6070 | South Africa
P O Box 28302 | Sunridge Park | 6008 | Port Elizabeth | South Africa
T (+27) 41 379 4173 C (+27) 82 749 6462
W www.businessrescue360.co.za
Business Rescue 360 Cape Reg No 2021/534306/07

LE
DM
my
DM

Blackie Swart Family Trust - Basic Asset Liabilities

Immovable Assets		Market	Forced Sale
Rebelsvlei	38,200,000	22,920,000	
Welgeluk	4,610,000	2,700,000	
Osberg	17,980,000	10,770,000	
Mon Repos	5,800,000	3,400,000	
Erle	5,600,000	3,300,000	
Eindeijk	9,100,000	5,400,000	
Kanaal Plas	17,100,000	10,300,000	
Paradys Strand	6,400,000	3,800,000	
Totals	104,790,000	62,590,000	
Total Debt	200,226,058	200,226,058	
Connected Debt	2,762,662	2,762,662	
Creditors Debt	197,463,396	197,463,396	
Security Only	45,867,138	45,867,138	
To Repay	151,596,258	151,596,258	
Due by connected entities re Loans	94,000,000	94,000,000	
Income from Harvest	4,000,000	4,000,000	
Assets p/Balance sheet	202,790,000	160,590,000	
Liquidity	2,563,942	(39,636,058)	
ABSA	111,835,608	111,835,608	

As indicated, the immovable assets of the Trust were independently valued by WH Auctioneers and collectively valued at a market value of R 104,790,000 and at a forced sale value of R 62,000,590.

In turn, the total debt of the trust is about R 200,226,058 from 42 proof of claim documents received. R 2,762,662 are owed to connected entities within the group, and this debt can be subordinated for the benefit of the rest of the creditors.

In addition to this, the amount of R 45,867,138 owed to Kaap Agri stands as security only and will be settled by a debt-for-equity swap for a farm belonging to a connected entity. This will be done upon approval of a business rescue plan for this business, as the debt was actually incurred for this business, but this business did not have sufficient securities to provide. It does, however, result in this amount being settled by the business that benefited from the loan and not from the trust.

The result from the above is that the actual debt due to creditors is about R 151,596,258. In turn, the assets of the Trust must include the immovable assets as mentioned above with a market value of R 104,790,000 and a forced sale value of R 62,000,590, added to this is the income from the receivable loan accounts of about R 94,000,000 and the income from the 2024 harvest of about R 24,000,000.

At market value, the business is then liquid by about R 2,563,942 and based on the forced sale value is illiquid by about R 39,636,058, thus a forced sale cannot be to the benefit of creditors.

As a final calculation, one must add the value of the movable assets: this has not yet been confirmed, but the 2023 AFS indicates this to be about R 28,431,530, resulting in a liquid business.

It is further common cause and accepted in all accounting practices that a business may be technically insolvent as a result of a bank loan, but it can continue to trade because the loan is to be repaid over time. In this matter, R 111,835,608 is due to the bank with payment terms in place.

(129)
11-6

Besters

ATTORNEYS

Your Ref: TVS/SS0449
Our Ref: P Bester/Debbie

28 January 2025

GOUWS ATTORNEYS

Dear Sir

re: **BLACKIE SWART FAMILIE TRUST**

We write to you at the request of Mr David Masterton, an adult male accountant and business rescue practitioner of Gqeberha. Your correspondence dated the 15th of January 2025 was referred to us for the necessary attention and reply. We also refer to the in person consultation with your Mr Van Schalkwyk on 22 January 2025 with Mr Pattinson and the e-mail of the same date withdrawing the letters and advising that;

“ In relation to the aforementioned matter, additional clarity and further information have been provided to us. In light of this, we hereby formally advise that the request to respond to the attached letters directed to Br360 is withdrawn under the current circumstances. ”

The following day your firm insisted on a reply.

The content of the three letters are so interlinked that it is appropriate to answer thereto in one response. Our client does not intend to deal with each and every averment contained in the letter and a failure to do so must not be construed as an admission of anything contained therein. Our client's rights remain fully reserved.

Before responding to the relevant content, we are advised to record formally a meeting as between our client and your Mr van Schalkwyk on Monday, 13 January 2025 when the upcoming sequestration application of your client, the Blackie Swart Family Trust, was discussed. During the meeting your Mr van Schalkwyk made no bones about the fact that the trust needs to delay and postpone the application in Grahamstown and must either throw our client, Mr Masterton, or attorney David le Roux “under the bus” to obtain a postponement. Given the content of your letters and this response, our client is obliged to forward a copy of this letter to the Applicant's legal team. Your client and yourselves have been aware of the application for months.

Our client wishes to record that the content of your letters and more particularly the requests contained therein have been ventilated and discussed with your Mr van Schalkwyk personally on various occasions whilst he represented his client, Mr Kiran Moodley as well as the trustees of the Trust. We are also requested to formally note that you are now the fourth set of attorneys acting for and on behalf of the Trust where this information is sought. The confrontation with your client and the business rescue practitioners started when the trustees of the Trust were caught out and confronted with dealings within the various entities referred to in your correspondence in a manner that is reckless, negligent and reportable. Our client was in fact obliged to indeed report certain transactions, inter alia to SARS. It is their view that it will have devastating consequences for your client.

16 12-2025
[Signature]

Be that as it may, we have in our possession a hard drive containing all our client's records and correspondence in relation to the affairs of the Trust which you are invited to collect. This information was previously made available to the Trust's second attorneys of record, Rihanda Strydom as well as to Joubert Galpin & Searle, your client's third set of attorneys and now to yourselves. Our client had lengthy meetings with Mrs Strydom and thereafter with both Mrs Cindy Jonker and Warren Parker of JGS. The questions and information now sought in your letters were thoroughly canvassed during those meetings.

In the premises all of what is demanded in your latest correspondence has already been provided and our clients do not have the time nor the inclination to spend and duplicate hours of explanations which have been provided to the Trust's attorneys on previous occasions. You are at liberty to peruse the content of the hard drive tendered and also collect your client's files from their previous attorneys.

It is recorded that our clients became involved in the affairs of the Trust and the group of companies during November 2023. It immediately became apparent to Mr Masterton that, and as quite correctly set out in his opposing papers to the sequestration application to which you allude to in your correspondence, that the affairs of the Trust is interlinked with that of the various entities in such a manner that they are unable to distinguish what the assets of the entities are, who the real creditors of the entities are and what debts exist. It is for this reasons that they approached the rehabilitation of the entities holistically. Upon commencing with the project, the affairs of all the entities were investigated and it could not be said that the BRP's were able to individually deal with the entities. The instructions originated from the group as a whole.

In view of the fact that you act for the Trust in the pending sequestration application, we assume that you are fully conversant with the contents of the opposing affidavit of Mr Masterton as you alluded to his conduct in one of your letters wherein the history is fully set out. We do not for the purposes of this letter and for this response, intend to regurgitate the known and common facts.

We note the content of your one letter headed "discussion regarding the allegations of financial discrepancies" and the threat of criminal implications for our client. Your letter is very vague as to what exactly you refer to in the affidavit. Your threat is dismissed with the contempt it deserves and you and your clients are invited to take whatever steps they deem appropriate under the circumstances. The fact of the matter is at the time of deposing to the Affidavit the business rescue practitioners were represented by the Trust's own attorneys and the alleged discrepancies between the payments and the statement made in Affidavit, is factually correct. The Affidavit was drafted by the very attorneys representing the Trust at the time. We can from the content of your letter and the context in which it is written only deduct that you refer specifically to paragraph 20.3 and 20.4 of Mr Masterton's opposing affidavit deposed to in the sequestration proceedings.

You will note from the wording of the said paragraphs that our client denied on behalf of the Trust that proceeds were "spirited away to assist the rescue proceedings" and thereafter our client as set out in paragraph 20.4, acted on legal advice. This is the legal advice provided by the Trust's own attorneys. At the time of deposing to the affidavit our client verily believed and still does that the content thereof to be true as the funds in respect of the sale of the one farm, which was sold prior to our client's participation, was dealt with by the Trust's attorneys. One can only assume that, once again given the context and tenor of your letter, that reference is made to the payment of the BRP's from the proceeds of the sale. At the time of deposing to the Affidavit and again assisted by the Trust's own attorneys, our client verily believed the content thereof to be true. Your Mr van Schaikwyk during a meeting at our client's offices on Monday, 13 January 2025 confronted our client about disbursements which you obviously became aware of. During the meeting you referred to a payment in respect of BRP fees. The invoice was issued to the Trust and paid by the Trust as the Trust was at the time the instructing client in respect of its own affairs and that of which it was the sole shareholder. To suggest that the Trust funds were utilized for any other purpose is defamatory. In any event, all the dealings of the Trust was with the full consent and knowledge of the trustees. If need be,

Handwritten signatures and initials at the bottom right of the page, including a large signature and the initials "JG" and "2".

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a supplementary affidavit will be prepared and distributed to all the parties and placed in the court file setting out the facts.

If the allegation is that our client mislead the court, he will happily clarify the position. The payment made in respect of their fees were indeed fees due by the Trust as instructing clients at the time and as agreed with the trustees and their attorneys. Upon a perusal of the application and reply it must be recorded that our client was not aware or privy to the correspondence prior to their involvement nor the undertakings given to the creditor. If the trusts attorneys gave undertakings it was never disclosed to our clients.

In the premises and given the very short time which our client was involved in the affairs of the Trust, all the financial transactions related thereto is contained in a hard drive which your client is invited to collect. Had they paid their previous attorneys of record, they would have had this information already.

Yours faithfully
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3.12. Below is a complete list of the holders of the Company's issued securities.⁹

Name	Issued Securities
Blackie Swart Familie Trust	100%

3.13. It is important to note that this plan does make provision for a change in securities as per the attached Annexure J between the investor and the trust.

3.14. Attached as Annexure F10 is a copy of the written fee agreement of the practitioner/s as approved by the business and the directors.

3.14.1. At the meeting to consider the proposed business rescue plan, the practitioner will hold a separate vote for the consideration of the proposed fee agreement.

3.15. No creditor has made any representations to the Business Rescue Practitioner/s and this business rescue plan includes no informal proposal made by a creditor.¹¹

4. **SALIENT FEATURES: PART B – PROPOSAL BY THE PRACTITIONER/S**¹²

4.1. This Proposed Business Rescue Plan does make provision for a specific moratorium period¹³ to be granted, payments on the historic debt that will be made to the creditors of the business resulting from the sale of the immovable assets of the business.

4.2. The offer in terms of this plan and the payment that is to be made to all creditors shall be in full and final settlement of such debt and all creditors shall by adoption of the Proposed Business Rescue Plan accede to the discharge of the whole of the debt in terms of the Act¹⁴.

4.3. However, the plan does not provide for any form of compromise, and as such, creditors holding valid sureties may continue to pursue those sureties for any outstanding shortfalls.

⁹ Section 150(2)(a)(iv).

¹⁰ Section 150(2)(a)(v).

¹¹ Section 150(2)(a)(vi).

¹² Section 150 (2).

¹³ Section 150(2)(b)(i).

¹⁴ Section 154(1).

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4.4. The intention is for all Secured and Concurrent Creditors of the business to be repaid 100 cents in the Rand.

4.5. Should full repayment not be possible, any remaining funds, after settling secured creditors and the cost of the business rescue, will be distributed to Concurrent Creditors in proportion to their claims, as received and approved.

4.5.1. This will be actioned as funds become available after transfer of respective properties and reconciliation of claims.

4.6. Proposals as set out herein Below:

4.6.1. This proposed business rescue plan outlines several phases, with some being implemented simultaneously and others in succession. The ultimate objective is to sell all the assets of the business, either to multiple buyers or to a single purchaser of the entire group.

4.6.2. These phases included are outlined below:

4.6.2.1. **Phase one:** A purchaser will be sought for the business and all of its assets to minimize the disruption of work and saving as many jobs as possible.

4.6.2.1.1. This offer will still be done on auction conditions with no latent and or patent claims against the directors, shareholders or practitioners being possible.

4.6.2.1.2. This offer will further be considered only in terms of Section 134 and 135 of the Companies Act and as such the secured creditors will have to approve the offer unless they are settled in full.

4.6.2.1.3. This offer must be secured and verified within a period of no longer than 10 working days, from the adoption of this proposed business rescue plan.

4.6.2.2. **Phase two:** this phase will commence simultaneously with phase one where respective buyers will be sought for respective farms and or groups of farms, should a single buyer not be secured.

4.6.2.2.1. These offers will still be done on auction conditions with no latent and or patent claims against the directors, shareholders or practitioners being possible.

4.6.2.2.2. These offers will further be considered only in terms of Section 134 and 135 of the Companies Act and as such the secured creditors, who hold security over respective immovable assets, will have to approve any offer for the assets

they hold security over unless they are settled in full.

4.6.2.2.3. These offers must be secured and verified within a period of no longer than 15 working days, from the adoption of this proposed business rescue plan.

4.6.2.3. **Phase three:** should any immovable assets not be sold in the above time frame; they will be handed over to an auctioneering business to auction off within a further 30 calendar days. Thus, no later than the 29th of November 2024.

4.6.2.3.1. Auction conditions will naturally apply, with no latent and or patent claims against the directors, shareholders or practitioners being possible.

4.6.2.4. These offers will further be considered only in terms of Section 134 and 135 of the Companies Act and as such the secured creditors, who hold security over respective immovable assets, will have to approve any offer for the assets they hold security over unless they are settled in full.

4.6.3. The business will sell all its immovable assets including, but not necessarily limited to:

PROPERTIES OWNED BY PROXIMITAS INVESTMENTS 60 (PTY) LTD		
Property name	Property Type	WH Market Value
Goodhope BB (Sunland)	Citrus Farm & Guesthouse	R33,460,000.00
Goodhope Farm	Citrus Farm	R69,945,000.00
Grootte Schuur and Beginsel	Citrus Farm	R12,658,000.00
De Rust / Boschkraal	Citrus Farm	R86,660,000.00
Lafranette	Citrus Farm	R 4,500,000.00
Morewag	Citrus Farm	R 6,395,000.00
Waterkloof	Citrus Farm	R43,026,000.00
Hemelsvlakte	Mixed (Citrus, Lucerne and Sorghum)	R39,087,000.00
1 Angle Street, Kirkwood	Home	R 1,450,000.00
10 Claredon Avenue Uitenhage	Home	R 1,500,000.00
		R298,681,000.00

4.7. Settlement Proposal:

4.8. The order of payment of claims and costs for this business rescue will follow the parameters as set out in Section 134 and 135 of the Act¹⁵ and is summarised as follows:

4.8.1. First - The fees and expenses still due to the practitioner/s in terms of Section 143 of the Act¹⁶ will be paid in terms of Section 135 of the Act.¹⁷ These expenses will include all costs to facilitate the business rescue process including but not limited to the accounting costs, legal, broker fees, short-term insurance, banking fees and statutory obligations as defined in the definitions to this rescue plan.

¹⁵ Section 150(2)(b)(v).

¹⁶ Section 143.

¹⁷ Section 135 (3)

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- 4.8.1.1. The practitioners' fees are per the annexed agreement. Should there be any arrears in fees due to the practitioners, these will also enjoy preferences afforded by the Act for post-commencement finance.¹⁸
- 4.8.1.2. It is further agreed that, should the practitioners be unable to claim their contingencies from the sale of an asset due to securities held by a creditor, they will be permitted to recover such fees and contingencies from the free residue resulting from the sale of additional or other assets, or from the income generated by the 2024 harvest.
- 4.8.2. Second - All creditors, including but not limited to staff, sub-contractors and or suppliers who have assisted the business with the completion of the ongoing trading of the business will be settled next from proceeds, for any of the work done or goods supplied to complete this work post business rescue commencement.
- 4.8.3. Third – any party that provided post-commencement finance will be repaid their respective loans in terms of their respective loan agreements; this may result in preference being given to Post Commencement Financiers, above that of Post Commencement.
- 4.8.3.1.1. NOTE: all Post Commencement Finance have been repaid in full.
- 4.8.4. Fourth – Secured Creditors:
- 4.8.4.1. The first secured creditors that requires mention is ABSA Bank:
- 4.8.4.2. ABSA Bank is a secured creditor and has provided the business with several facilities. Their total direct debt at the time of filing for business rescue was approximately R 147 466 522.
- 4.8.5. The full settlement of ABSA debt is envisioned in respect of the sale of the immovable assets that ABSA holds security over.
- 4.8.5.1. The Direct Debt due to ABSA bank by Proximitas are as follow:
- 4.8.5.1.1. Overdraft Facility acc no: 40-5972-7655 for an amount of about R10 979 935.
- 4.8.5.1.2. Term Loan Facility acc no: 30-5282-3417 for an amount of about R24 125 160.

¹⁸ Section 135.

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- 4.8.5.1.3. Term Loan Facility acc no: 30-5335-7152 for an amount of about R75 440 446.
- 4.8.5.1.4. Term Loan Facility acc no: 30-5382-6288 for an amount of about R24 823 740
- 4.8.5.1.5. Agri Loan Facility acc no: 80-8069-9236 for an amount of about R4 638 226
- 4.8.5.1.6. Mortgage Loan Facility acc no: 80-9081-3710 for an amount of about R2 938 906
- 4.8.5.1.7. AVAF loan accounts 9562-8210, 9562-8287, 9562-8376, 9562-9810 and 9563-0281 for an amount of about R4 520 105.40
- 4.8.5.2. The above is as per COB provided by ABSA Bank
- 4.8.6. It is important to note that although ABSA bank has been supportive of the business rescue process and has not demanded payment of post-business rescue obligations, these payments remain due and payable at the request of ABSA Bank for bond repayments, loan repayments, and vehicle and asset repayments.
- 4.8.7. Furthermore, ABSA Bank has continued, as is their right, to charge interest and fees on all debt, whether current or in arrears, and this must be settled in full.
- 4.8.8. It is also worth noting that no protection is provided in this proposed plan for any sureties provided by any party. Any creditor in possession of a valid surety may pursue that surety.
- 4.8.9. ABSA further provided R 16 000 000 in Post Commencement Finance, and although this does not increase their voting interest, the PCF remains due and payable in terms of the agreement reached between ABSA Bank and the business.
 - 4.8.9.1. This Post Commencement Finance has been repaid in terms with the agreement.
- 4.8.10. In addition to the above, ABSA bank further holds a valid "Unlimited Suretyship by Proximitas Investments 60 (Pty) Ltd" signed in July 2012 for the debt of the Blackie Swart Familie Trust.
 - 4.8.10.1. The trust is indebted to ABSA Bank for approximately R 113 231 357, and as such, this amount and its respective voting interest must be added to the creditors' list of Proximitas.

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4.8.11. Furthermore, ABSA Bank also holds a valid "Unlimited Suretyship by Proximitas Investments 60 (Pty) Ltd" signed in July 2012 for the debt of Blue Crane CC.

4.8.11.1. Blue Crane is indebted to ABSA Bank for approximately R 1 327, and as such, this amount and its respective voting interest must be added to the creditors' list of Proximitas.

4.8.11.2. The above results in the total indebtedness to ABSA Bank by Proximitas, as a result of its direct debt and connected debts, being approximately R 257 760 283, representing a voting interest of approximately 59.55%.

4.8.12. Lastly, ABSA Bank holds valid cession for all loan accounts due to Proximitas from these connected entities.

4.8.12.1. These loan accounts total approximately R 94 706 798 and represent, an additional, voting interest of approximately 21.41%.

4.8.12.2. The total voting interest of ABSA Bank is thus approximately 80.96%, represented by debt of approximately R 354 406 005, excluding the R 16 000 000 PCF.

	Debt	Vote
Direct due by Proximitas	R 147 466 522	Yes
Indirect due by Blackie Swart Familie Trust	R 113 231 357	Yes
Indirect due by Blue Crane	R 1 327	Yes
Post Commencement finance	R 16 000 000	No
Loan Accounts	R 94 706 798	Yes

4.8.13. ABSA then holds several securities and sureties for their debt and this plan does not prevent ABSA from perusing these valid sureties and or securities.

4.8.14. ABSA Bank holds the following securities for the previously mentioned exposure:

- 4.8.14.1. Limited Surety by Mrs M Swart of R3 000 000.00, Ring-fenced for Mortgage loan 80-9081-3710 and supported by Cession of loan account in Blackie Swart Familie Trust and Cession of loan account in Blue Crane Exports CC for R32 800 000.00
- 4.8.14.2. Unlimited Surety by Blue Crane Exports CC, supported by general cession of loan account.
- 4.8.14.3. Unlimited Surety by Blackie Swart Familie Trust, supported by general cession of loan account.
- 4.8.14.4. 1st Continuous Covering Mortgage Bond registered 27 October 2023 in the amount of R3 500 000.00 over Erf 8633, Uitenhage.
- 4.8.14.5. 1st Continuous Covering Mortgage Bond registered 2 August 2012 in the amount of R15 000 000.00, 2nd registered 30 August 2013 in the amount of R10 000 000.00, 3rd registered 27 August 2020 in the amount of R26 300 000.00 and 4th registered 3 August 2023 in the amount of R35 000 000.00 over Portion 48, over Remainder of Portion 49, Remainder of Portion 293, Portion 432 and 433 of the Farm Strathsomers Estate No. 42, Uitenhage RD.
- 4.8.14.6. 1st Continuous Covering Mortgage Bond registered on 28 April 2021 in the amount of R27 000 000.00 and 2nd registered 19 July 2023 in the amount of R5 000 000.00 over Portion 30 of the Farm Selborne No. 115, Uitenhage RD Portion 31 of the Farm Selborne No. 115, Uitenhage RD Portion 32 of the Farm Selborne No. 115, Uitenhage RD Portion 33 of the Farm Selborne No. 115, Uitenhage RD Portion 34 (Remaining extent) of the Farm Selborne No. 115, Uitenhage RD Portion 158 of the Farm Selborne No. 115, Uitenhage RD Portion 206 of the Farm Selborne No. 115, Uitenhage RD Portion 208 of the Farm Selborne No. 115, Uitenhage RD Portion 209 of the Farm Selborne No. 115, Uitenhage RD
- 4.8.14.7. 1st Continuous Covering Mortgage Bond registered on 21 December 2020 in the amount of R100 000 000.00 over Ptn 3 of Landdrost Veeplaats Farm No. 84, Uitenhage RD and Ptn 5 of Landdrost Veeplaats Farm No. 84, Uitenhage RD
- 4.8.14.8. The vehicle and assets finance are secured over the respective assets purchased.
- 4.8.15. Additional securities provided for the PCF:
 - 4.8.15.1. A 1st Continuous Covering Bond (CCMB) of R50 000 000 was registered on the 14th of August 2024 in favour of Absa Bank over the following 3 unencumbered farm properties held i.n.o. Proximitas Investments 60 Pty Ltd :.
 - 4.8.15.2. • Portion 168 of the farm Claas Kraal nr. 539, Uitenhage RD, Province of the Eastern Cape (Farm Lafranette)

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4.8.15.3. • Portion 141 of the farm Strathsomers Estate 42, Uitenhage RD, Province of the Eastern Cape (Farm Morewag)

4.8.15.4. • Portion 45 ; Portion 127 ; Remainder of Portion 294 (portion of Portion 218) ; Portion 359 (portion of Portion 217) ; Portion 335 (portion of Portion 293) and Portion 336 (portion of Portion 293) of the farm Strathsomers Estate No. 42, Uitenhage RD, Province of the Eastern Cape (Farm Waterkloof)

4.8.16. Please note that the above list of securities and or sureties may not be complete.

4.8.16.1. All immovable assets that serve as security for ABSA Bank will be sold with ABSA's consent, and the full proceeds from these sales, less any direct costs associated with the sale of the immovable assets, will be allocated to ABSA.

4.8.16.1.1. These costs include transfer fees, cancellation fees, rates clearance costs, and the settlement of arrear rates, taxes, electricity, and water charges.

4.8.16.1.2. It is important to note that ABSA must provide consent for each sale, and each sale may differ depending on the respective offers made and approved.

4.8.16.1.3. If the immovable assets are auctioned, auction-related costs must be settled first, and no consent will be required for these specific costs.

4.8.16.2. Although unlikely, should there be any shortfall in settling ABSA's debt from the sale of the immovable assets, ABSA will retain the right to pursue any valid sureties held prior to the filing for business rescue.

4.8.16.2.1. Any shortfall will be added to the concurrent claims of the business and settled in proportion with the other concurrent creditors.

4.8.16.2.2. Should there be any surplus funds from the sale of an immovable asset, the surplus will be used to settle the claims of the concurrent creditors in proportion to their respective claims.

4.8.17. The Second secured creditors that requires mention is Kaap Agri

4.8.17.1. Kaap Agri is owed about R 45 889 589.00 for security for debt incurred by the group and is secured debt arises from First Mortgage Bonds being registered over certain Farms together with Suretyship Agreements concluded with Kaap-Agri, Proximitas, Steenbokvlakte and Tracto Trading 100 CC (Hereinafter referred to as Tracto).

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4.8.17.1.1. This bond is registered over the farm known as Hemelsvlakte and if the debt to Kaap Agri cannot be settled by Steenbokvlakte, this farm will be sold for the benefit of Kaap Agri. Proximitas could then have a claim due to it from Steenbokvlakte.

4.8.17.1.2. The Business Rescue Plans for both Steenbokvlakte and Tracto have been published and adopted by creditors. These plans include provisions acknowledging the indebtedness to Kaap Agri and the requirement to sell the portion of the farm owned by Proximitas, which stands as security for the debt of Steenbokvlakte.

4.8.18. Fifth – The Concurrent Creditors, including pre-business rescue debt to SARS, will be repaid 100 cents in the Rand, based on the claims received and as outlined in Annexure B.

4.8.18.1. Alternatively, all proceeds from the sale of unsecured immovable assets, or surplus funds from the sale of any assets that stood as security for any creditor, will be used for this purpose.

4.8.19. Should full repayment not be possible from the funds received, all available funds will be distributed proportionally to all Concurrent Creditors as full and final settlements, based on their approved claims.

4.8.19.1. This distribution will be actioned as funds become available, following the transfer of respective properties and reconciliation of claims.

4.8.20. Sixth – SARS Any and all future exposure to SARS with regards to the continued trading of the business will be paid as and when it becomes due in the ordinary course of business.

4.8.20.1. The pre-rescue indebtedness to SARS (if any) will form part of the concurrent claims against the business and will be repaid with the remaining concurrent claims in terms of this rescue plan.

4.8.21. Seventh – Further concurrent claims as a result of intercompany loan accounts. These loan accounts will be scrutinized prior to disbursement. However, these loan accounts will be subordinated for the benefit of the remaining creditors of the business once reconciled.

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- 4.8.21.1. Please, however further note, that the subordination does not inhibit ABSA Bank from collecting on any loan accounts they hold valid cessions over. It only provides that shareholders, directors, trustees, beneficiaries and or members will not be repaid any loans until creditors are settled, this includes ABSA as a creditor.
- 4.8.22. Further, as ABSA holds a valid cession over all loan accounts, they will be responsible to vote in respect of these loan accounts.

4.9. Dispute Resolution Mechanism:

- 4.9.1. Should any affected person dispute any of the provisions of this business rescue plan, such disputes may be raised at any time prior to the voting on the business rescue plan.
- 4.9.1.1. If these disputes relate to a creditor's claim, or the quantum thereof, they will be addressed after the adoption of the plan.
- 4.9.1.2. If these disputes relate to the provisions of the proposed business rescue plan, they will be addressed during the meeting to vote on the proposed business rescue plan and must be resolved prior to the vote.
- 4.9.1.3. Should the dispute arise from the adoption of the plan or due to any supposed voting irregularities, these disputes must be resolved as outlined below:
- 4.9.1.3.1. Such disputes must be raised within 5 working days of the adoption of the proposed business rescue plan, with formal notice provided to the practitioner(s) to prevent the plan from being implemented.
- 4.9.2. Any disputes that cannot be resolved timeously (within an additional 10 days) will be referred to the Arbitration Foundation of South Africa (AFSA) in accordance with the South African Restructuring and Insolvency Practitioners Association (SARIPA) dispute resolution procedure for independent arbitration relating to business rescue disputes.

Section 154: Discharge of debts and claims

"A Business Rescue Plan may provide that, if it is implemented in accordance with its terms and conditions, a creditor who has acceded to the discharge of the whole or part of a debt owing to that creditor will lose the right to enforce the relevant debt or part of it.

If a Business Rescue Plan has been approved and implemented in accordance with this Chapter, a creditor is not entitled to enforce any debt owed by the Company immediately before the beginning of the Business Rescue Process, except to the extent provided for in the Business Rescue Plan."

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October 2024

CIRCULAR 24

THIS DOCUMENT IS A CIRCULAR TO THE AFFECTED PERSONS RELATING TO THE BUSINESS RESCUE PROCESS OF **PROXIMITAS INVESTMENTS 60 (PTY) LTD** IN TERMS OF THE COMPANIES ACT, 71 OF 2008 AS AMENDED (THE ACT).

OUTCOME OF THE MEETING TO VOTE ON THE PROPOSED BUSINESS RESCUE PLAN

The business rescue practitioners¹ wish to advise all the affected persons of the outcome of the meeting to vote on the proposed business rescue plan, held on the 28th of October 2024. The purpose of this meeting was solely to discuss the published business rescue plan and to vote on the adoption of same.

The practitioner took time at the commencement of the meeting to explain the procedures that would be followed during this meeting and the manner in which the relevant votes would be conducted.

Presenting of the Business Rescue Plan:

The practitioner presented the proposed business rescue plan to the affected persons who were present at the meeting to vote.

Confirmation of a Reasonable Prospect:

The practitioner continued to confirm his belief of a reasonable prospect of a successful rescue – in that the plan proposed provides a substantially better return to the affected persons than that which would be received if the business were immediately and traditionally liquidated.

1 Quinton (Pat) Pattinson, Senior Business Rescue Practitioner and David Masterton, Experienced Business Rescue Practitioner.

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Comments from Staff:

Opportunity was provided for staff to present any comments. This business does however not have any staff members and none of the directors made any comments either.

If the Business Rescue Plan is Adopted:

The practitioner confirmed that should the plan be adopted, that in terms of Section 154 of the Companies Act, any creditor may oppose the process by means of an application to court within 5 business days of the adoption of the plan – the application needn't be brought before the court in 5 days, but the opposing creditor would need to notify the practitioners of their intent to bring such an application within 5 days. Failing which, the practitioners would continue with the implementation of the adopted rescue plan and to subsequently file for implementation of the plan once the milestones are achieved per the plan.

If the Business Rescue Plan is Not Adopted:

However, should the plan not be adopted, Section 153 of the Companies Act would apply. In terms of this section, creditors would be given the opportunity to ask for an amended proposed business rescue plan. If there is no request for an amended rescue plan, then the practitioner would need to file a notice of termination with the CIPC and return the business to the shareholders.

Suggested amendments and points of clarification:

All of the suggested amendments or points of clarification were briefly discussed in the meeting and all points were explained and there was opportunity given at each instance for any comments questions or suggestions.

Suggested Amendments**Point 4.8.5 currently reads:**

"The full settlement of ABSA debt is envisioned in respect of the sale of the immovable assets that ABSA holds security over."

Will be amended to read:

"The full settlement of ABSA debt is envisioned in respect of the sale of the immovable and movable assets that ABSA holds security over."

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Suggested Amendments

Concurrent Creditors other than loan accounts and contingent debt:

Please further note that the total debt to concurrent creditors are only about R 2,792,043.73, this exclude the secured portions that will result from contingent debt and the connected loan accounts as indicated in annexure B of the plan.

The practitioners will be in a position to settle this debt from the income of the 2024 harvest by the 28th of February 2025.

This clarification was discussed at length and it essentially means that the concurrent creditors, who do not have security over assets, are provided with some form of a security that a portion – equal to what is due to them or what would be due after the settling of the secured debt, may be paid out to them in advance out of the proceeds of the 2024 harvest (thus by February 2025).

All concurrent creditors will receive the same cents in the rand dividend, this just allows those "non-contingent" concurrent creditors to receive their portion a little earlier.

Suggested Amendments

Other

5.5.1 will be corrected to read:

"It is proposed that the Company **will cease trading** as all its assets would have been sold by no later than 30 November 2024, and therefore no projected financials will be provided."

5.2.6.2 – Any amendments must be adopted by **75% and not majority**.

There was a mistake in the BR plan – and the business will cease trading and not continue trading. This need not be voted on as it is just a correction.

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Suggested Amendments

Clarification:

Par 4.8.16 refers to "full proceeds less direct costs" which could be read as in contradiction with par 2.17 which refers to all BR costs to be recovered from sale of immovable assets.

The practitioner/s cost are not considered direct cost, and they are willing to risk not receiving full contingencies to allow maximum funds from the sale of an immovable asset, to flow to the secured creditor.

No fees will be paid from secured portions of respective sales, but remains due from other income.

Clarification:

This proposed business rescue plan outlines **several phases**.

- The **ultimate objective is to sell all the assets** of the business, either to multiple buyers or to a single purchaser of the entire group.
 - It is not the intention to follow through with all three phases should the previous phase have been implemented successfully.
 - Thus, should a buyer be secured as per phase one, phase two and three will not be initiated.
 - Should phase one not be successful, phase two and three will commence with its marketing simultaneously, but run parallel, the one not being dependent on the other.
 - Meaning assets sold in phase two will be removed from phase three, if all assets are sold in phase two, phase three will not commence.
 - Contingencies will also only be due on a single level and if phase one is successful, the practitioners will be entitled to only secure contingencies from the purchase price of the business and no further contingencies would be due.

It was confirmed at this stage that any offers received during the various phases would need to be brought to the creditors for consent – for example if there were an offer that would result in a less than 100 cents in the rand dividend, this would need to be presented to the creditors for their approval.

Similarly, any sale of an asset that does not cover the full security over that asset, will require the consent of the secured creditor. Consent will not be required if the full debt is to be settled from the sale.

Questions:

1. How realistic is it to sell these properties in the proposed timelines?
And if these offers are not received, will these properties not be sold at low prices at auction? Furthermore, the time of the year makes it difficult to sell these properties.

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Mr. Pattinson confirmed the following:

Even if the properties are not sold during the first two phases of the proposed plan, and the properties are put to auction – these auctions are all Subject To Confirmation (STC) by the secured creditor and the practitioners will not sell any property without the consent of the secured creditor (again, unless the full security will be settled by the offer).

The timing does indeed make it difficult to sell the properties and the market may well be saturated due to all the properties hitting the market at the same time. However, the business does not have the capital to continue trading and maintaining these farms in the hopes of potentially selling these farms at a later date for a better price.

2. Based on the above, another question was asked about further investment in order to maintain the farms until a later date when better offers could potentially be sought. Whether any of the secured creditors would be willing to put in the funds to maintain the farms.

This was discussed at length, and it came to the conclusion that none of the creditors, nor the investor would be willing at this stage to put up the funds to maintain the farms until an auction can be held at a later date.

This does have the risk that should sufficient offers not be received at the auction, that the farms could stand idle and unmaintained until a suitable buyer is found – but the business won't have the funds to maintain operations passed the first week of December 2024. This means simply that we will have to proceed as per the 3 phases in the proposed business rescue plan.

A further postponement was discussed – in that it would give the creditors opportunity to discuss securing funding for maintaining the properties. This was however very quickly opposed due to the fact that the process cannot afford to be delayed any further due to there already being a potential buyer which would not participate further should the process be delayed again and various other factors – it was for these reasons that the creditors agreed to at this stage, proceed to the votes on the proposed business rescue plan including the above amendments and clarifications.

The first vote was taken, and creditors voted with 100% of those present and who exercised their right to vote in favour to proceed to the second vote and to thus accept the plan with the amendments as presented to them (if applicable) prior to the vote.

The Second Vote cast was to accept or reject the fee proposal that was proposed per the published rescue plan and also again outlined during this meeting. This was adopted as 100% of those present and who exercised their right to vote voted in favour of the adopted of the fee proposal.

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The Third vote cast was to determine whether the attendees wished to accept or reject the business rescue plan.

A 100% vote from affected persons at the meeting and those who had given proxy and who exercised their right to vote was achieved in favour of the adoption of the business rescue plan.

The result of the above votes thus entail that the business rescue plan is in force as at the time of voting.

The practitioners will file for substantial implementation of the business rescue plan once the milestones have been achieved as per the now adopted business rescue plan.

Quinton Pattinson

patp@businessrescue360.co.za

082 749 6462

David Masterton

davidm@businessrescue360.co.za

082 569 3813

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15/11

"OM-11"

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Wednesday, April 2, 2025 at 11:49:47 South Africa Standard Time

Subject: FW: Proximate Immovable Properties
Date: Wednesday, 02 April 2025 at 11:48:09 South Africa Standard Time
From: Pat Pattinson | Business Rescue 360
To: Paul Bester
Attachments: 0.jpg, WH Properties Auction Proposal (Kirkwood Farms) 2025 update.pdf, WH Auction Sale Mandate - Kirkwood Farms (Proximitas).pdf, WH Rules of Auction -2024 update.pdf, Conditions of Sale of Auctioned Immovable Property - (Standard).pdf

From: Pat Pattinson | Business Rescue 360 <Patp@businessrescue360.co.za>
Date: Friday, 17 January 2025 at 11:17
To: kiran@doregos.co.za <kiran@doregos.co.za>
Cc: David Masterton | Business Rescue 360 <Davidm@businessrescue360.co.za>
Subject: FW: Proximate Immovable Properties

Good morning Kiran

Please find attached the documents from WH Auctioneers. Kindly confirm that all the information relating to the immovable properties is correct and that you agree with the terms, particularly point 32.8 (not point 33, as mentioned in Joshua's email).

We have also requested the inclusion of clauses for STC that ABSA must provide, as they hold security over the immovable assets.

Looking forward to your thoughts.

From: Joshua Pelkowitz | WH Properties (Pty) Ltd <joshuap@wh.co.za>
Date: Wednesday, 15 January 2025 at 13:50
To: Pat Pattinson | Business Rescue 360 <Patp@businessrescue360.co.za>
Cc: David Masterton | Business Rescue 360 <Davidm@businessrescue360.co.za>
Subject: RE: Proximate Immovable Properties

Hi guys,

As promised, please find attached:

1. Auction proposal (take note of suggested break fee)
2. Auction mandate (take note of suggested break fee – clause 33)
3. Rules of auction (standard rules, subject to any changes required by Secured Creditors/BRPs)
4. Conditions of sale/Sale Agreement (standard, subject to any changes required by Secured Creditors/BRPs)

I have left the reserve prices blank for your completion. All offer in any event will be submitted subject to confirmation.

The auction dates suggested are either the 26th or 27 of February (provided we get go-ahead by 20

DM-124

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Wednesday, April 2, 2025 at 11:49:23 South Africa Standard Time

Subject: FW: Proximate Immovable Properties
Date: Wednesday, 02 April 2025 at 11:47:54 South Africa Standard Time
From: Pat Pattinson | Business Rescue 360
To: Paul Bester
Attachments: 0.jpg, WH Auction Sale Mandate - Kirkwood Farms (Proximitas) update.pdf

From: Pat Pattinson | Business Rescue 360 <Patp@businessrescue360.co.za>
Date: Monday, 20 January 2025 at 08:49
To: kiran@doregos.co.za <kiran@doregos.co.za>
Cc: David Masterton | Business Rescue 360 <Davidm@businessrescue360.co.za>
Subject: FW: Proximate Immovable Properties

Good. Morning Kiran

Please find attached the amended auctioneers agreement. Kindly confirm the information contained in the agreement by initialing the respective pages.

Regards Pat

From: Joshua Pelkowitz | WH Properties (Pty) Ltd <joshuap@wh.co.za>
Date: Friday, 17 January 2025 at 13:33
To: Pat Pattinson | Business Rescue 360 <Patp@businessrescue360.co.za>
Cc: David Masterton | Business Rescue 360 <Davidm@businessrescue360.co.za>
Subject: RE: Proximate Immovable Properties

Hi,

Find attached as requested – please confirm the amendments to clause 8.3 and change of clause numbering to 33?

Joshua Pelkowitz



WH Auctioneers Properties (Pty) Ltd
Address: 578 16th Road, Randjespark, Midrand, South Africa
P.O. Box 557, Kelvin, 2054, South Africa
Tel: +27 11 574 5700 | **Mobile:** +27 72 536 5482
Email: joshuap@wh.co.za
Company Reg No: 2012/202070/07 | **VAT No:** 4310269388
www.whauctions.com | [Directions to our office](#)

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"DM-13"

QP 11



AUCTIONEERS

SOLE AND EXCLUSIVE MANDATE TO SELL IMMOVABLE PROPERTY BY AUCTION

Between

PROXIMITAS 60 INVESTMENTS (PTY) LTD IN BUSINESS RESCUE

(Registration number _____)

HEREIN REPRESENTED BY THE APPOINTED BUSINESS RESCUE PRACTITIONERS, DAVID MASTERSON
AND PAT PATTINSON

("Seller")

and

WH AUCTIONEERS PROPERTIES PROPRIETARY LIMITED

Registration Number 2012/202070/07

("WH")

1. The Seller hereby grants to WH, who hereby accepts, the sole and exclusive right and mandate to sell the property/ies referred to herein by way of auction.
2. This mandate shall commence on date of signature by the party last signing same ("Signature Date") and shall continue and remain in force until midnight on **31 March 2025** ("Initial Period").
3. This mandate shall not be capable of being terminated, cancelled or revoked by the Seller during the Initial Period.
4. WH shall conduct the auction substantially in accordance with the rules of auction attached marked **Annexure A, ("Rules of Auction")**, which the Seller, by its signature hereto, acknowledges having read and understood.
5. The sale agreement in relation to the Property shall be substantially upon the terms and conditions set forth in the conditions of sale attached marked **Annexure B, ("Conditions of Sale")**, which the Seller, by its signature hereto, acknowledges having read and understood.
6. The following property/ies ("Property") form the subject matter of this mandate -
Title Deed Description (Farm Names):

Property Type	Property name	OWNER
Citrus Farm & Guesthouse	Goodhope BB (Sunland)	Proximitas Investments 60 (Pty) Ltd
Citrus Farm	Goodhope Farm	Proximitas Investments 60 (Pty) Ltd
Citrus Farm	Grootte Schuur and Beginzel	Proximitas Investments 60 (Pty) Ltd
Citrus Farm	Lafranette	Proximitas Investments 60 (Pty) Ltd
Citrus Farm	Môrewag	Proximitas Investments 60 (Pty) Ltd
Citrus Farm	Waterkloof	Proximitas Investments 60 (Pty) Ltd
Home	Kirkwood - Korkie (1 Angle Street)	Proximitas Investments 60 (Pty) Ltd
Home	10 Claredon Avenue Uitenhage	Proximitas Investments 60 (Pty) Ltd

7. The Seller warrants that it is the owner and has all right, title and interest in and to the Property and that it has the right to sell or otherwise dispose of the Property as contemplated herein.
8. The Property shall be –
 - 8.1 offered for sale by public auction by WH on or before **Thursday 27 February 2025**
 - 8.2 auctioned **online via webcast** at www.whauctions.com; and
 - 8.3 auctioned **subject to confirmation by the secured creditors** at prices deemed acceptable to them ("Reserve Price"), unless WH otherwise announces at the auction.

Handwritten signature/initials



9. All Prices are quoted exclusive of VAT.
10. The Property may be auctioned at a price less than the Reserve Price if agreed in writing between the Seller and WH. The Seller specifically authorizes WH to bid on its behalf at the auction up to the Reserve Price. The Seller or a representative of the Seller other than WH may similarly bid up to the Reserve Price.
11. It is specifically acknowledged and agreed that neither the Seller nor WH may bid for the Property above the Reserve Price.
12. The Property may be removed by WH from auction if WH, in its sole and absolute discretion, believes there is no or inadequate interest to purchase the Property at the auction.
13. Should the Reserve Price be achieved by WH at auction, WH is hereby irrevocably and unconditionally authorised and empowered to forthwith confirm the sale on behalf of the Seller by signing the Conditions of Sale and doing all things necessary and incidental to the sale, for and on behalf of the Seller.
14. Should the Reserve Price be achieved by WH as a result of a sale effected out of hand other than at an auction, the provisions of this mandate shall, mutatis mutandis, apply to that sale.
15. The commission payable to WH shall be 10% (Ten Percent) of the purchase price, plus VAT thereon.
16. Commission shall be deemed earned and shall be due, owing and payable by the purchaser of the Property forthwith upon signature by both the purchaser and the Seller (or by WH on behalf of the Seller) of the Conditions of Sale.
17. Subject to clause 33, the total costs of advertising, storage, labour and other charges associated with conducting the auction shall be ~~R100 000-00~~ plus VAT thereon.
18. WH shall recover the amount in clause 17 from the proceeds of the sales as a first draw from any deposit monies held and issue a VAT invoice to the Seller.
19. All amounts payable in terms of and pursuant to this mandate -
- 19.1 are exclusive of any applicable VAT. It is acknowledged and agreed that VAT shall be payable in addition to those amounts upon presentation of a valid VAT invoice; and
- 19.2 shall, unless otherwise stated, be paid within fourteen days from date of invoice.
20. WH undertakes to advertise the auction of the Property at least ten business days prior to the auction.
21. If any amount payable in terms hereof is not paid on due date therefor, that amount shall bear interest from the due date for payment to the actual date of payment at the prime bank overdraft rate published by ABSA Bank Limited from time to time on unsecured overdraft. A certificate under the hand of any representative of such bank as to the prevailing prime rate shall be prima facie proof of the contents thereof and the authority and designation of such representative shall not be necessary to prove.
22. WH shall employ the following advertising and marketing techniques for the sale of the Property -
- 22.1 WH shall erect and place advertising boards in and around the Property;
- 22.2 WH shall market and publicize the auction of the Property in accordance with the usual and normal marketing plans, systems and standards applied by WH from time to time; and
- 22.3 WH shall use reasonable commercial endeavours to negotiate and obtain letters of intent and/or offers in respect of the Property subject to and substantially in accordance with the Rules of Auction and the Conditions of Sale.
23. WH shall keep the Seller reasonably apprised at all times of progress regarding the auction, and shall report on all significant comments and remarks made by potential purchasers in regard to the Property.
24. Unless otherwise agreed in writing, WH shall not be obliged to provide the Seller with an itemised account of all goods sold upon completion of the auction.
25. If the Consumer Protection Act, 68 of 2008 ("CPA") applies to this mandate and if -

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- 25.1 this mandate was granted to WH as a result of any direct marketing conducted by WH (as between WH and the Seller), then notwithstanding 3 and 4 above, the Seller shall be entitled in terms of section 16 (3) of the CPA to terminate this mandate without reason or penalty within five business days after the Signature Date. The Seller shall do so by giving written notice to that effect to WH in the prescribed form set out in Annexure C to the CPA Regulations;
- 25.2 the Seller is not a body corporate, partnership, association or a trust (collectively, "Juristic Person" as defined in the CPA), the Seller may terminate this mandate by giving twenty business days written notice to WH to that effect, provided that in this event, the Seller shall pay to WH, as a reasonable cancellation fee having regard to services provided in contemplation of discharge of the mandate by WH, the aggregate of –
- 25.2.1 all actual costs and other disbursements incurred by WH in terms of and pursuant to this mandate; and
- 25.2.2 an amount equal to one half of the commission that would have been payable in 16. It is specifically recorded and agreed that for purposes of calculating such amount the term 'purchase price' in 16 shall be read as and be deemed to mean the Reserve Price.
26. The Seller acknowledges, agrees and undertakes (as a genuine pre-estimate of damages), that it shall pay to WH forthwith on demand 10% (Ten Percent) of the greater of the purchase price and the Reserve Price, if –
- 27.1 during the Mandate Period, the Seller –
- 26.1.1 directly or indirectly sells or disposes of or endeavours to sell or dispose of the Property himself and/or through the agency of a third person; and/or
- 26.1.2 breaches any provision of this mandate such that WH is frustrated in its performance hereunder; and/or
- 26.1.3 interferes in any way whatever, directly or indirectly, with WH's efforts to market and/or sell the Property;
- 26.1.4 at any time during or after expiry of the Mandate Period, the Seller directly or indirectly sells or otherwise disposes of the Property to any person who, during the Mandate Period, was introduced to the Seller and/or the Property by WH.
27. A copy of this mandate shall be retained by WH for a period of at least three years from the date of the auction.
28. Subject to and save as otherwise provided in the Rules of Auction, the Seller –
- 28.1 shall have no claim against WH arising from or pursuant to a failure or default by a purchaser of the Property in the performance of any of the purchaser's obligations in terms of or pursuant to the auction and/or the sale of the Property;
- 28.2 shall have no claim against WH arising from or pursuant to WH failing to perform its obligations under the mandate, unless such claim arises from fraud or gross negligence on the part of WH or a contravention by WH of any relevant statute of South Africa governing the auction and/or the sale of the Property;
- 28.3 shall ensure that WH and any purchaser or prospective purchaser shall have full and unrestricted access to the Property at all reasonable times in order that WH may fulfill its obligations in terms of this mandate and in terms of the Property Practitioners Act, 22 of 2019 ("PPA");
- 28.4 shall instruct the conveyancer attending to the registration of transfer of the Property to pay commissions and/or auction fees and/or costs due to WH forthwith upon registration of transfer as a first draw against the proceeds of such transfer;
- 28.5 shall be obliged to accept any *bona fide* offer made in writing substantially upon the terms contained in the Conditions of Sale (whether at the auction or otherwise), if the purchase price offered equals or exceeds the Reserve Price;

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AUCTIONEERS

- 28.6 warrants in favour of WH that all information provided by it to WH in respect of the Property is and shall be true and correct in all respects;
- 28.7 indemnifies and holds WH harmless against all loss, liability, damage and expense of any nature whatever and however arising which WH may suffer or incur as a result of or which may be attributable, directly or indirectly, to the use of or reliance upon any information provided to WH by the Seller;
- 28.8 is hereby bound to absolute secrecy, privacy and non-disclosure to any third party, agent, broker or auction house regarding mandate prices, reserve prices, commissions and other details referred to or contemplated herein and pertaining to the Property and/or the auction and/or the sale of the Property. Any enquiry received by the Seller or its representative regarding the Property shall forthwith be directed to WH; and
- 28.9 acknowledges and agrees that all negotiations and/or discussions pertaining to the marketing, advertising, auctioning and/or selling of the Property shall during the Mandate Period be the sole domain of WH and that all such negotiations and discussions shall be maintained as secret and confidential.
29. In accordance with regulation 22(3)(j) of the CPA, the Seller's attention is specifically drawn to the following exact copy of **Section 65(2) of the CPA – "65 SUPPLIER TO HOLD AND ACCOUNT FOR CONSUMER'S PROPERTY"**
- (2) When a supplier has possession of any prepayment, deposit, membership fee, or other money or any other property belonging to or ordinarily under the control of a consumer, the supplier –
- (a) must not treat that property as being the property of the supplier;
 - (b) in the handling, safeguarding and utilisation of that property, must exercise the degree of care, diligence and skill that can reasonably be expected of a person responsible for managing any property belonging to another person; and
 - (c) is liable to the owner of the property for any loss resulting from a failure to comply with paragraph (a) or (b)."
30. In accordance with regulation 22(3)(k) of the CPA, the Seller's attention is specifically drawn to the following exact copy of the relevant sub sections of
31. **Section 45 of the CPA – "45 AUCTIONS"**
- (1) In this section "auction" includes a sale in execution of or pursuant to a court order to the extent that the order contemplates that the sale is to be conducted by an auction.
 - (2) When goods are put up for sale by auction in lots, each lot is, unless there is evidence to the contrary, regarded to be the subject of a separate transaction.
 - (3) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in any other customary manner and until that announcement is made, a bid may be retracted.
 - (4) Notice must be given in advance that a sale by auction is subject to
 - (a) a reserved or upset price; or
 - (b) a right to bid by or on behalf of the owner or auctioneer, in which case the owner or auctioneer, or any one person on behalf of the owner or auctioneer, as the case may be, may bid at the auction.
 - (5) Unless notice is given in advance that a sale by auction is subject to a right to bid by or on behalf of the owner or auctioneer –
 - (a) the owner or auctioneer must not bid or employ any person to bid at the sale;
 - (b) the auctioneer must not knowingly accept any bid from a person contemplated in paragraph (a); and
 - (c) the consumer may approach a court to declare the transaction fraudulent if this subsection has been violated."
32. **GENERAL PROVISIONS**
- 32.1 Should any dispute arise between the parties in regard to this mandate, the interpretation or the carrying into effect or the termination or cancellation or the rectification or proposed rectification of any provision thereof (other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction), such dispute shall be submitted to and decided by arbitration in accordance with the Arbitration Rules of AFSA, by an arbitrator or arbitrators appointed by AFSA.



AUCTIONEERS

- 32.2 The parties choose the following addresses for the giving of any notice, the payment of any sum, the serving of any process and for all other purposes arising from and pursuant to this agreement –
- 32.2.1 Seller -
- 32.2.2 WH - 578 16th Road
Randjespark
Midrand
Email: joshuap@wh.co.za
Marked: "Attention Joshua Pelkowitz"
- 32.3 This agreement contains all the provisions agreed between the parties with regard to the subject matter thereof. The parties waive the right to rely on any alleged express, tacit or implied provision not contained herein.
- 32.4 No party may rely on any representation which allegedly induced that party to enter into this agreement, unless the representation is recorded herein.
- 32.5 No contract varying, adding to, deleting from or cancelling this agreement, and no suspension of any right under this agreement, shall be effective unless reduced to writing and signed by or on behalf of the parties.
- 32.6 No waiver or indulgence by a party of any right under this agreement shall be effective unless reduced to writing and signed by or on behalf of the parties.
- 32.7 Subject to 32.1, the parties irrevocably and unconditionally consent to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg. This agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa.
33. The Seller acknowledges and warrants in favour of WH that it will pay WH a cancellation/break fee of **R250 000 (excl. VAT)** for potential loss of income and time spent, plus all marketing costs of R100 000 (Excl. VAT), in the event that Mr. Kiran Moodley or any of his companies or associated people or entities, makes a binding Offer, acceptable to the Business Rescue Practitioners of Proximitas for the properties no later than 5 business days prior to the Auction Date. Should Mr. Kiran Moodley or any of his companies or associated people or entities not make an offer by the above-mentioned date, this clause will be of no force or effect and Mr. Kiran Moodley or any of his companies or associated people or entities will be required to register and bid at the auction.

Signed at _____ on _____.

For: The Seller

(Seller's Signature) Who warrants his/her authority hereto

Full name of signatory representing the Seller: _____

The person signing this mandate on behalf of the Seller warrants his/her authority to do so and binds himself/herself personally as surety for and co-principal debtor in solidum with the Seller for the due and punctual payment and performance by the Seller of all the Seller's obligations hereunder. If the signatory does not have the required authority as contemplated herein, he shall be liable to WH for payment of all advertising, storage, labour and auction costs incurred by WH as well as any other damages that WH may suffer as a result of and arising pursuant to a breach of warranty of authority to sign this mandate.

Signed at _____ on _____.

For: WH Auctioneers Properties Proprietary Limited

(WH Signature) Who warrants his/her authority hereto

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"DM-14"

(155)

Wednesday, April 2, 2025 at 11:45:27 South Africa Standard Time

Subject: Sale of Farms : Proximity's (PTY) Ltd
Date: Friday, 31 January 2025 at 11:31:49 South Africa Standard Time
From: Paul Bester
To: kiran@doregos.co.za, dean@doregos.co.za, Pat Pattinson | Business Rescue 360, David Masterton | Business Rescue 360, Dgouws@tvsattorneys.co.za
Priority: High
Attachments: image001.png

Dear Kiran : Urgent assistance

As you know the adopted business rescue plan of Proximitas (PTY) Ltd provides for the sale of all the assets of the company in a winding down process. Our clients, the BRP's have instructed auctioneers to proceed with the process and as such need to make arrangements with the people on the ground to visit, erect for sale signs, take photographs and generally prepare for the auction. They intend to do so soon. In the premises kindly inform all the staff and affected persons thereof and make the necessary preparations for the visit. Clients will advise of the exact date.

Clients also seek a full and detailed list of movable assets of the company. This has been outstanding for some time as they may very well be sold as well.

In preparation clients will also need the original title deeds. Kindly obtain same in your capacity as director of the company. Our clients have asked for them on numerous occasions but have to date not received any cooperation from the previous directors. This is an urgent instruction that requires your immediate attention and response.

Our clients have also on numerous occasions sought the full details and reasons of whom reside on the farms and may be affected by the sale. Kindly provide our clients with this information within seven days.

Regards

Paul Bester

B PROC (UPE) / Certificates: Tax Compliance (UPF), Advanced Insolvency Litigation and Administration (UP), SARIPA (UP), Business Rescue (UWISA), Advanced Course Construction Contracts (UP), International Trade and Arbitration (US)

C: 082 555 2740

T: (041) 585 2200 / (041) 585 1313

E: paul@besters.biz

50A Pickering Street, Newton Park, Port Elizabeth, 6045
P.O. Box 27157, Greenacres, 6057
(Member of SARIPA & INSOL International)



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"DM-15"

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Wednesday, April 2, 2025 at 11:40:17 South Africa Standard Time

Subject: Letter to Kiran Moodley
Date: Thursday, 06 February 2025 at 09:45:08 South Africa Standard Time
From: Paul Bester
To: kiran@doregos.co.za, dean@doregos.co.za, Dgouws@tvsattorneys.co.za, David Masterton | Business Rescue 360, Pat Pattinson | Business Rescue 360
Priority: High
Attachments: image001.png

Dear Kiran

I again write to you at the request of my clients Messrs Masterton and Pattinson.

It is noted with disappointment that no action or response has been forthcoming in respect of our last correspondence dated 31 January 2025. In the premises I hold instructions to formally draw your attention to the provisions of the Companies Act 71 of 2008 with specific reference to your obligation as director of the company. It is strongly suggested that you take legal advice on your obligations as director in general as well as your obligation to assist the appointed business rescue practitioners. In your capacity as director you are subject to the instructions of the duly appointed BRP. A failure to fulfil your fiduciary duties and comply with requests of the BRP's may result in an application to have you removed and declared a delinquent director. Our clients are contemplating approaching the court if no assistance is provided.

In the premises clients formally record that

1. You have been requested to provide details of whom occupy houses on the farms of Proximitas, where those houses are situate and on what basis such individuals occupy the premises. You are again requested to provide the information. The contact details of each occupant is also required as those occupants need to be informed of the sale and given the appropriate notices to vacate in the event of a sale.
2. Similarly you have been requested to provide a list of assets, particularly movable, that belongs to the company. You are also required to inform the BRP's where they are situated.
3. In view of the fact that the adopted rescue plan now provides for the sale of all the farms by public auction and no farming operations will be conducted by Proximitas thereafter no expenses other than simply sustaining and preserving the land will be incurred. Nobody has any mandate to incur any costs or expenses if not approved by the BRP's in writing. You cannot incur expenses and simply seek authority to pay. Prior consent must be obtained. This is also applicable to requests for reimbursements such as salaries, wages and breakdowns.
4. You are required to provide full details of all employees of the company, what they do and where they work before any expenses will be incurred. These expenses must be pre-approved before they will be considered for payment.
5. You are again requested to provide details of where the various title deeds of the properties are, specifically the unencumbered farms. This includes the residential properties.
6. Our clients will be arranging for the auctioneers to erect for sale signs as well as making available the farms for inspection by potential buyers. For this purpose they have allocated every Tuesday and Thursday from 09h00 to 16h00 as a timeslot. You are required to make the necessary arrangements and avail yourself during this time.

You are granted until close of business on Friday the 7th of February 2025 to provide the information

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as set out in paragraphs 1 to 3 above failing which clients will take such remedial and enforcement action that they deem necessary under the circumstances. It is formally recorded that this information has previously been formally requested from both yourself as current director as well as your predecessors.

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Regards

Paul Bester

3 PROC (UPE) / Certified Tax Competency (UPE) / Insolvency Litigation and Administration (UP), SARIPA (UP), Business Rescue (UNISA), Advanced Course Construction Contracts (UP), International Trade and Arbitration (US)

C: 082 555 2740

T: (041) 585 2200 / (041) 585 1313

E: paul@besters.biz

50A Pickering Street, Newton Park, Port Elizabeth, 6045

P.O. Box 27157, Greenacres, 6057

(Member of SARIPA & JNSOL International)



Handwritten signature and initials.

"DM-16"

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Wednesday, April 2, 2025 at 15:08:33 South Africa Standard Time

Subject: RE: Objection to Scheduled Auction and Demand for Immediate Withdrawal
Date: Thursday, 06 February 2025 at 15:06:04 South Africa Standard Time
From: dgouws@tvsattorneys.co.za
To: Paul Bester, 'David Masterton | Business Rescue 360', 'Pat Pattinson | Business Rescue 360'
CC: kiran@doregos.co.za
Attachments: image001.png

Dear Paul,

1. We act on behalf of Proximitas as well the Trust, which has a direct interest in this matter. The Trust is fully aware of this correspondence.

We hold instructions as follow:

2. As you are well aware, the Trust was placed under provisional sequestration on 30 January 2025. Your client subsequently filed a supplementary affidavit, which was submitted by the applicant in the sequestration application. This affidavit confirms your knowledge of certain possible dispositions related to the Trust's assets, including the transfer of shares held by the Trust in Proximitas. The scheduled auction of fix assets set to be auctioned on 27 February 2025 has a direct impact on the trust and creditors, due to the possible disposition of the shares in Proximitas.
3. We hereby formally place on record our objection to this auction proceeding, given the irregularities surrounding the alleged disposition of assets and your direct knowledge thereof. Despite this, you persist in requesting information in relation to these assets for auction purposes, which we are not in a position to provide given the concerns at hand.
4. In terms of Section 76 of the Companies Act 71 of 2008, directors owe fiduciary duties to act in the best interests of the company and its stakeholders, including creditors.
5. Any disposal of assets under these circumstances may trigger liability under section 218(2), which provides that any person who contravenes the Act may be held personally liable for damages.

In light of the above, we demand the immediate withdrawal and/or postponement of the scheduled auction. You are given until close of business on 11 February 2025 to comply.

Failure, neglect, or refusal to do so will leave us with no alternative but to approach the appropriate Court with jurisdiction to seek urgent relief preventing the auction from proceeding.

We trust that you will give this matter the urgent attention it requires.

Warm Regards

TIAAN VAN SCHALKWYK
Associate
D GOUWS INC t/a GOUWS ATTORNEYS
136 CAPE ROAD
MILL PARK

rk

dm

"DM-17"

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Wednesday, April 2, 2025 at 15:19:36 South Africa Standard Time

Subject: Re: Objection to Scheduled Auction and Demand for Immediate Withdrawal
Date: Friday, 07 February 2025 at 10:15:42 South Africa Standard Time
From: Paul Bester
To: dgouws@tvsattorneys.co.za, 'David Masterton | Business Rescue 360', 'Pat Pattinson | Business Rescue 360'
CC: kiran@doregos.co.za
Priority: High
Attachments: image001.png, image002.png

Dear Sir

We have taken instructions from clients in respect of your e-mail below and advise as follow.

1. Our clients are the duly appointed Business Rescue Practitioners of Proximitas and the only ones that may instruct attorneys to act for and on behalf of the company. They have not done so and your statement that you act for and on behalf of Proximitas is denied and factually incorrect. Your mandate to act is thus disputed.
2. Similarly, the affairs of the trust now fall in the hands of the Master of the High Court until such time that a provisional trustee is appointed. Your mandate is in the premises disputed and in any event irrelevant. Our clients have no further interest in the affairs of the trust. We strongly suggest that you research the principle of *concursum creditorum*.
3. We do not understand the content and or relevance of your paragraph 2 in that;
 - a. Our clients have not been in control of or had any influence in the affairs of the trust since 24 July 2024
 - b. The disposition of trust assets referred to in the affidavit placed before court at the time of the trusts misguided application for a postponement was not during the time of our clients involvement with the trust
 - c. Insofar as the sale of shares is concerned we suggest that your Mr Van Schalkwyk tread very carefully as
 - i. He drafted the sale agreement
 - ii. He had full knowledge of and facilitated the transaction
 - iii. He did so with full knowledge of the pending sequestration application of the trust and knowing there exists no real defence to it
 - iv. Requested the payment of his account at the insistence of Messrs Moodley and Pillay
 - v. The transaction was disclosed to our clients after the fact
 - d. The same principles apply in respect of the sale of other assets after 24 July 2024 when our clients mandate was terminated and your Mr Van Schalkwyk's personal involvement attracts the same comment as set out *supra*
3. Insofar as reference is made to the auction we also suggest your familiarise yourself with the Companies Act, more specifically chapter six thereof relating to the adoption and implementation of a rescue plan. Our clients are simply at the implementation phase. Clients also find it particularly relevant that the plan was drafted, published and voted on with the participation of Moodley, Pillay and their erstwhile attorneys. It is only now that Moodley is unable to raise the funds to implement phases one and two of the plan that last minute desperate threats are made. It will be dealt with at the appropriate time.
4. Your clients refusal to cooperate with the practitioners is noted. They will take the appropriate action.
5. Our clients are statutorily compelled to implement the plan which they will do. Your threat of

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Regards

Paul Bester

[illegible]

C: 082 555 2740

T: (041) 585 2200 / (041) 585 1313

E: paul@besters.biz

50A Pickering Street, Newton Park, Port Elizabeth, 6045

P.O. Box 27157, Greenacres, 6057

(Member of SARIPA & INSOL International)



From: dgouws@tvsattorneys.co.za <dgouws@tvsattorneys.co.za>

Date: Thursday, 06 February 2025 at 15:06

To: Paul Bester <paul@besters.biz>, 'David Masterton | Business Rescue 360'

<Davidm@businessrescue360.co.za>, 'Pat Pattinson | Business Rescue 360'

<Patp@businessrescue360.co.za>

Cc: kiran@doregos.co.za <kiran@doregos.co.za>

Subject: RE: Objection to Scheduled Auction and Demand for Immediate Withdrawal

Dear Paul,

1. We act on behalf of Proximitas as well the Trust, which has a direct interest in this matter. The Trust is fully aware of this correspondence.

We hold instructions as follow:

2. As you are well aware, the Trust was placed under provisional sequestration on 30 January 2025. Your client subsequently filed a supplementary affidavit, which was submitted by the applicant in the sequestration application. This affidavit confirms your knowledge of certain possible dispositions related to the Trust's assets, including the transfer of shares held by the Trust in Proximitas. The scheduled auction of fix assets set to be auctioned on 27 February 2025 has a direct impact on the trust and creditors, due to the possible disposition of the shares in Proximitas.
3. We hereby formally place on record our objection to this auction proceeding, given the irregularities surrounding the alleged disposition of assets and your direct knowledge thereof. Despite this, you persist in requesting information in relation to these assets for auction purposes, which we are not in a position to provide given the concerns at hand.
4. In terms of Section 76 of the Companies Act 71 of 2008, directors owe fiduciary duties to act in the best interests of the company and its stakeholders, including creditors.
5. Any disposal of assets under these circumstances may trigger liability under section 218(2), which provides that any person who contravenes the Act may be held personally liable for damages.

In light of the above, we demand the immediate withdrawal and/or postponement of the scheduled



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IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION, MAKHANDA

Case No: 735/2025

BEFORE THE HONOURABLE MR. JUSTICE LAING

On the 26th day of February 2025

IN THE MATTER BETWEEN:

PROXIMITAS (PTY) LTD

MARIKE SWART N.O.

JOHANN SWART N.O.

WAYNE EDWIN TINLEY N.O.

AND

DAVID MASTERSON

QUINTON PATTINSON

BR360 (PTY) LTD

**THE MASTER OF THE HIGH COURT,
GRAHAMSTOWN/MAKHANDA**

1st APPLICANT

2nd APPLICANT

3rd APPLICANT

4th APPLICANT

1st RESPONDENT

2nd RESPONDENT

3rd RESPONDENT

4th RESPONDENT

Having heard Adv. Smuts (SC), Counsel for the Applicants and Adv. Du Toit, Counsel for the Respondents and having read the Notice of Motion and other documents filed of record

IT IS ORDERED THAT:

1. The application be and is hereby dismissed.

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2. The Applicants are to pay the Respondents' costs on Scale C.

BY ORDER OF COURT



S. MPAKO

REGISTRAR

NOLTE SMIT ATTORNEYS

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA EASTERN CAPE DIVISION MAKHANDA	
Provide Reg X1011, Makhanda 0140	
	2025-02-26
ECC MAKHANDA-001	
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA EASTERN CAPE DIVISION MAKHANDA	

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"DM-19"

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Tuesday, April 1, 2025 at 09:21:08 South Africa Standard Time

Subject: Re: EMPLOYEE SALARIES
Date: Tuesday, 18 February 2025 at 11:07:59 South Africa Standard Time
From: Paul Bester
To: kiran@doregos.co.za, 'David Masterton | Business Rescue 360', 'Pat Pattinson | Business Rescue 360', dgouws@tvsattorneys.co.za
Priority: High
Attachments: image003.jpg, image004.png, image005.jpg, image001.png

Dear Sir

The writer has taken instructions on the content of your mail hereunder.

Your mail is in response to a mail transmitted to you on 13 February 2025 which forms part of the trailing mail. We do not intend to repeat the content thereof herein save to state that you have failed to respond to the direct and lawful instructions of the BR's. This will be dealt with in the appropriate forum.

Once again we record that the BRP's will not respond to each and every allegation verbatim as much of the content is irrelevant. Their rights remain fully reserved.

Our specific instructions are that;

1. The BRP's have throughout been fully transparent in their dealings and had on a day to day basis liaised with you appointed employee Mr Deal Pillay. You are well aware of the financial position and have visited our clients offices on an ongoing basis when all available financial data and decision making processes was made available, discussed and jointly decided upon. Be that as it may, our client will revert tomorrow with updated bank statements and supplier debatements. You have also been personally instructed and mandated to engage with Veganis and thus bear personal knowledge of the state of affairs relating to sales and the reconciliation thereof. A matter which you coincidentally have failed to resolve at all prompting our clients to take action. The general financial position is fully set out in the published rescue plans which we once again record both yourself and your employee Pillay were integrally involved in that entire process.
2. Our clients have never denied you as director any information and the suggestion that they are doing so is dismissed with the contempt it deserves. We refer you to your mail of 1 October 2024 wherein your position is set out. You appointment was to "ensure that I have the necessary control and comfort in overseeing operations and making decisions regarding the use of my resources on the farm." It has also become common cause that you now purportedly own the BSFT shareholding in Proximitas, a transaction certainly to be set aside by the duly appointed trustees. Your directorship is in the premises founded on questionable grounds. Be that as it may our clients recognise your position for the time being. My instructions are however firm that your appointment was to resolve the long outstanding issues which Marika and the other directors failed and refused to provide.
3. The costs and expenses that Proximitas is not liable for has been spelt out in numerous e-mails to yourself and you very well know that it may only relate to costs and expenses that directly promote the interests of the company and not that of other entities. The elephant in the room is of course the expenses of the Blackie Swart Family trust wherein you have a substantial interest and exposure. Proximitas cannot fund and pay its expenses such as salaries and the controversial Eskom accounts. To date you have failed to provide our client with staff details as repeatedly requested nor what the immediate needs are to carry the company up to the auction date. They simply get fed a list of salaries without motivation under threat of violence in the event of non-

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payment. It is patently clear that their fear is to pay salaries of wages of other entities while under provisional sequestration with Proximitas funds and when Proximitas potentially does not owe the trust and money. It is common cause and practice that a debatement is done among the entities at the end of the season. Our clients are busy therewith but frustrated in their completion of the task inter alia due to your uncooperative stance and third parties failure to account.

4. In respect of your allegation and reference is made to the electricity supply it is our instructions that all the Proximitas accounts have been paid up to date or acceptable arrangements are in place. None of the Proximitas farming operations are affected. Insofar as private residences are concerned our client still waiting for your feedback on who and why people reside on the various farms. The payment information was shared with you prior to the transmission of your mail on Saturday 15 February 2025. What has not been paid is the BSFT accounts as well as the accounts of the farms sold and for which we are instructed you are contractually bound to the owners to pay the accounts. Upon a visit to the farm and interaction with attorney Labuschagne, when confronted with the termination of services, our clients found for the first time that the services were terminated. It is not their responsibility to pay those accounts for which you and or the BSFT is responsible. Your inuendo of mismanagement and failure to attend to operational challenges are thus unfounded and malicious. The electricity issue is already dealt with in the trailing mail. Our instructions are further that Eskom's frustration and action is inter alia due to your failure to sign acknowledgement of debts and stick to arrangements made.
5. The challenges you face with the demands of ABSA in settling the trusts debts are of no concern to our clients. They are faced with an adopted rescue plan which they are duty bound to implement which they are doing. You were fully aware of the challenges you faced. You have sought several extensions for the implementation of the plan which the creditors had approved. Their patience has however run out.

In the premises and to avoid any misunderstanding you are again called upon to

1. Immediately provide a full and detailed list of employees employed by or directly contributing to the interests of Proximitas.
2. Details of all persons residing on the property of Proximitas, the reasons why they reside there and details of any right to reside there

Our clients are busy compiling a comprehensive list of matters that you have failed or refused to address from mails transmitted to you and to which no satisfactory response has been forthcoming. I have a consultation early tomorrow morning and am in Pretoria at this moment.

From the above it is clear that the term "the pot calling the kettle black" is appropriate.

My client await your responses to the urgent information sought as set out supra.

Regards

Paul Bester

APPRO (JURIS) - Certified for Corporate and Financial Services, Insolvency, Liquidation, Company Rescue (Pty), SARB (UK), Directors, Receivers (UK & US), Advanced Courts Construction Contracts (UK), International Trade and Arbitration (US)

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(Member of SARIPA & INSOL International)



my
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From: kiran@doregos.co.za <kiran@doregos.co.za>

Date: Saturday, 15 February 2025 at 10:19

To: Paul Bester <paul@besters.biz>, 'David Masterton | Business Rescue 360'

<Davidm@businessrescue360.co.za>, 'Pat Pattinson | Business Rescue 360'

<Patp@businessrescue360.co.za>, dgouws@tvsattorneys.co.za

<dgouws@tvsattorneys.co.za>

Subject: RE: EMPLOYEE SALARIES

Dear Paul,

I acknowledge receipt of your correspondence. However, I must note with concern that rather than directly addressing my specific requests, each query is met with a counterstatement or deflection. My requests for clarity remain outstanding, and I require direct responses to the matters raised, particularly in terms of the applicable legal provisions and regulatory framework governing business rescue.

It is imperative to emphasize that the auction has not yet taken place, further that I remain the duly appointed director of Proximitas, as such, I am entitled to request and receive the necessary financial and operational information in terms of Section 140(1)(a) of the Companies Act, 71 of 2008, which expressly provides that, subject to the authority of the business rescue practitioners, the directors of a company under business rescue retain their statutory functions and responsibilities.

I therefore require clarity on the following:

1. Please provide a detailed breakdown of Proximitas' financial position, including an account of income generated from fruit sales and an allocation of expenses.
2. What is the legal basis for withholding this information from me as a director of the company?
3. The BRPs have asserted that Proximitas is not responsible for certain operational costs, including electricity.
4. If this is the case, kindly provide the legal rationale for this position, considering the fiduciary duty under Section 140(3)(c) of the Companies Act, which requires the BRPs to act in the best interests of the company and its creditors.
5. Additionally, what steps, if any, were taken by the BRPs to prevent operational disruptions resulting from the electricity disconnection?

It has been suggested that the business rescue plan is now in a new phase due to delays attributed to me. This is incorrect—the delays are a direct result of financing conditions imposed by ABSA, including the requirement to settle the Blackie Swart Family Trust's debt.

The BRPs have been fully aware of this requirement. Kindly confirm on what legal basis the BRPs are now seeking to proceed in a manner that disregards this known financing condition.

Given that the requested information is fundamental to my role as director and to the lawful implementation of business rescue proceedings, I must insist that it be provided without further delay. Should the BRPs maintain their refusal, I request that you set out, in explicit legal terms, the statutory

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or regulatory basis upon which they rely in withholding this information.

Failure to provide this clarity, our rights remain reserved.

I trust that the above matters will be addressed without further evasion or deflection, and I look forward to receiving a substantive response with urgency.

Regards

Kiran Moodley
Chief Executive Officer

62 Newton Street
Newton Park, Cqeberha, 6045
+27 (0) 41 363 0064 (Head Office)



 +27 (0) 61 473 4030

 kiran@doregos.co.za

 www.captaindoregos.co.za

From: Paul Bester <paul@besters.biz>

Sent: Thursday, 13 February 2025 10:30

To: kiran@doregos.co.za; 'David Masterton | Business Rescue 360' <Davidm@businessrescue360.co.za>; 'Pat Pattinson | Business Rescue 360' <Patp@businessrescue360.co.za>; dgouws@tvsattorneys.co.za

Subject: Re: EMPLOYEE SALARIES

Importance: High

Dear Kiran

Your e-mail hereunder refers. For obvious reasons the content thereof was discussed with my clients, I consulted with them and they wish to respond as follow.

1. They do not intend to deal with each and every allegation or item as contained therein and their rights remain fully reserved. Only issues of immediate relevance will be addressed
2. You are referred to various e-mails transmitted to you as director of Proximitas as well as several letters addressed to the trustees of the Blackie Swart Family Trust relating to the issue of salaries on the various farms. The BRP's are yet to receive a satisfactory explanation as well as summary of which employees are employed at which farms and by which entity. This goes back to meetings with Rihanda Strydom, JGS as well as with yourself. To date no information has been forthcoming.
3. You are well aware of issues such as employees wanting to be paid that are not employed by or has anything to do with the affairs of Proximitas

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4. There is no decision made not to pay employees. You were requested to provide information of who exactly is employed by or contributing to the affairs of Proximitas, what role they play and which you have to date failed and refused to provide. Your continued breach of your fiduciary duties is to the detriment of the company. You are again invited to simply provide the information as requested by the BRP's.
 5. Our clients agree fully with the statement that disruptions are to avoided on the farms and you are with respect the only individual whom can avoid such disruptions.
 6. To clarify matters our clients wish to record that
 - a. Their mandate to act for or have anything to do with the affairs of the trust was terminated on 24 June 2024, some eight months ago.
 - b. You appear to have a conflict of interest in that you in your capacity as director of Proximitas appear to act in the interest of the Trust to the detriment of Proximitas by inter alia demanding payment from Proximitas for the trusts expenses.
 - c. In this respect the BRP's cannot use Proximitas funds to pay any trust expenses. You are referred to the numerous e-mails relating to the Eskom account, your undertaking to make payment arrangements and sign an acknowledgment of debt which you have failed to do. These mails emanated from your own representative Mr Dean Pillay. This is what lead up the disconnection of electricity to the trusts farms. On what basis is it the obligation of Proximitas to pay the electricity usage of the trust, particularly when it is in provisional sequestration. Furthermore when our clients were confronted by one Fanus on the farm on 12 February 2025 it was made clear that they are not in charge of the farms. Fanus was referred to Mr Tiaan Labuschagne of Greyvenstein's who was shocked by the state of affairs and advised that in terms of the contractual agreements entered into as between his clients and yourself, you are obliged to pay the accounts as you are in possession of the farms. It cannot be placed at our clients door.
 - d. The implementation of the rescue plan is now in phase three due to the fact that you have been unable to raise the funds as promised. You requested several extensions which were approved by creditors at the time but not anymore. The landscape has now changed, as you very well know, in that the auction is scheduled for 27 February 2025. You have known this for some time now and were part of the entire decision making process. This includes the payment of expenses for which you now suddenly seek explanations of. It appears that you are attempting to lay an unfounded basis for some sort of urgent application to suspend or postpone the sale. Be forewarned that the creditors shall not agree thereto for several reasons. The most obvious is that there are simply no funds to continue farming operations. It is in the interest of the company and its creditors achieve a price to cover the debt and avoid liquidation proceedings.
 7. The BRP's have throughout engaged with you on everything that was decided or done but your combative approach is clearly motivated by your unsuccessful attempt to obtain a postponement in the sequestration proceedings of the trust and securing the funds for the intended purchase of the enterprise.
 8. You continually refuse to assist the BRP's and it is on record that they will take such action that is necessary to protect the interests of Proximitas. I hold instructions to launch the relevant proceedings which will be served on you in due course. Kindly advise a service address.
 9. Our clients door however remains open for discussion and resolution as cooperation will achieve a better result as opposed to confrontation and litigation. The choice remains yours.

Regards

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Paul Bester

CPA (SARPS) / Coordinator Tax Compliance (SARPS), Advanced
Insolvency Liquidation and Administration (LIT), SARPA (SARPS), Business
Rescue (BRS), Advanced General Commercial Governance (SARPS),
International Trade and Arbitration (SARPS)

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(Member of SARIPA & INSOL International)

Besters

ATTORNEYS

From: kiran@doregos.co.za <kiran@doregos.co.za>

Date: Thursday, 13 February 2025 at 08:09

To: 'David Masterton | Business Rescue 360' <Davidm@businessrescue360.co.za>, 'Pat Pattinson | Business Rescue 360' <Patp@businessrescue360.co.za>

Cc: Paul Bester <paul@besters.biz>

Subject: RE: EMPLOYEE SALARIES

Dear Pat and David

I acknowledge receipt of your email, sent via your legal representative. However, given the serious nature of the matters raised, I require direct responses from the practitioners to ensure operational clarity.

Your email states that no worker approval requests have been received, and as a result, salaries and wages may not be paid. However, I require clarification on the following:

- **On what basis has it been determined that no salaries or wages are owed?**
- **What process was followed to review and assess these payments?**
- **How does this decision align with maintaining operational stability and ensuring that farm operations continue uninterrupted?**

It is imperative that we avoid disruptions that could negatively impact the business, and clarity on this matter is essential.

I have been informed that electricity has been **disconnected at the BSFT farms due to non-payment to Eskom**. Given that BSFT is in **provisional sequestration, not final sequestration**, I need clarity on the following:

- **What was the decision-making process behind this non-payment?**
- **Does the BRP intend to rectify this issue?** If not, what is the justification for this approach?
- **Has the potential harm to laborers housed on the farms and the farm's operational requirements been considered?**

It is important to understand how critical operational costs such as electricity are being prioritized to prevent further risk to assets and productivity.

Your email states that **funds may be redirected elsewhere**. Please provide:

- **A clear breakdown of how financial decisions are being made** regarding operational expenses.
- The **criteria for approving essential costs**, particularly salaries and utilities.
- Whether the **BRPs acknowledge these as necessary business expenses** and how they intend to address them.

These matters directly impact the farm's ability to function. I request that you provide

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clear responses to the above concerns so that we can understand the approach being taken.

Kind regards

Kiran Moodley
Chief Executive Officer

62 Newton Street
Newton Park, Gqeberha, 6045
+27 (0) 41 363 0064 (Head Office)



+27 (0) 61 473 4030

 kiran@doregos.co.za

 www.captaindoregos.co.za

From: Paul Bester <paul@besters.biz>
Sent: Wednesday, 12 February 2025 10:15
To: kiran@doregos.co.za; dgouws@tvsattorneys.co.za
Subject: EMPLOYEE SALARIES
Importance: High

Good morning, Kiran,

I again write to you at the request of my clients Messrs. Masterton and Pattinson.

Please be aware that, despite numerous correspondence regarding this matter, no requests for worker approval have been received. Consequently, the practitioners believe that no salaries or wages are owed, and the available funds may be redirected elsewhere.

As previously communicated, all costs must be approved by the practitioners before they are incurred. This clear and reasonable instruction explicitly included salaries and wages.

Furthermore, our client is still awaiting the invoices, including a detailed breakdown of previous payments made and as discussed with you.

We take this opportunity to remind you that Proximitas is currently in business rescue and, as such, in financial distress. The practitioners cannot provide financial assistance to any other entity, particularly one such as the BSFT which is under provisional sequestration. Therefore, only salaries and wages that have been pre-approved by the practitioners for services rendered strictly in relation to the upkeep of the Proximitas farms only, until their respective auctions will be considered for payment. Such requests must have been pre-approved and substantiated.



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Please note that salaries and/or wages cannot be paid to staff working on any other farms, especially those already sold.

Should you, as the director of Proximitas or as the representative of the trust, believe that any salaries or wages are due, please provide a detailed response outlining your position, accompanied by the necessary approvals from the practitioners.

Regards

Paul Bester

is PROL (UPP) / Coordinates: law Competency (UPP), Advanced Insolvency Litigation and Administration (UPP), SARIPA (UPP), Business Rescue (UNISA), Advanced Course Construction Contracts (UPP), International Trade and Arbitration (US)

C: 082 555 2740

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E: paul@besters.biz

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P.O. Box 27157, Greenacres, 6057

(Member of SARIPA & INSOL International)



NDM

"DM-20"

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Monday, March 31, 2025 at 16:02:45 South Africa Standard Time

Subject: RE: LETTER OF DEMAND- OBJECTION TO AUCTION SCHEDULED FOR 27 FEBRUARY 2025
Date: Monday, 24 February 2025 at 16:14:12 South Africa Standard Time
From: dgouws@tvsattorneys.co.za
To: Paul Bester, 'Pat Pattinson | Business Rescue 360', 'David Masterton | Business Rescue 360'
Attachments: image001.png

Dear Paul,

We do not intend to engage in legal argument through correspondence, but in short response to your letter, we advise as follows:

1. Your assertion that we lack the mandate to act is incorrect. Shareholders and affected persons have standing in law to challenge the conduct of the BRPs where it is irregular or prejudicial. Section 128(1)(a) of the Companies Act 71 of 2008 defines affected persons to include shareholders, giving them the right to take action to protect their interests. The requirement that the BRPs must consent to legal representation is unfounded.
2. Your letter denies that the BRPs had knowledge of or were involved in the sale of shares in Proximitas.

This is incorrect for the following reasons:

- 2.1 The BRPs were aware of the sale and did not object or intervene at the relevant time.
- 2.2 They either explicitly acknowledged or implicitly permitted the transaction.
- 2.3 Having allowed the sale to proceed, the BRPs cannot now deny knowledge or involvement to avoid legal consequences.

The principle of estoppel, prevents a party from later denying a fact or legal position they previously accepted or allowed. The BRPs' prior conduct precludes them from now disavowing knowledge of the share transaction.

3. Your claim that urgency is self-created is legally flawed. The test for urgency is whether an imminent action will cause irreparable harm if not immediately addressed.
4. The fact that prior references were made to an auction date does not negate the unlawful or prejudicial nature of the intended sale.
5. The application concerns not merely the auction itself but the irregular conduct of the BRPs, which necessitates urgent intervention.
6. The BRPs' duty under Section 141(2)(b) of the Companies Act is to discontinue business rescue where it becomes evident that it is no longer viable. Their failure to do so raises serious legal concerns.
7. Your letter suggests that stopping the auction will only delay the inevitable. However, the BRPs are bound by law to conduct business rescue in a manner that does not unduly prejudice affected parties, including shareholders and creditors.

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8. If the auction proceeds based on an irregular or prejudicial process, affected parties have the right to intervene.
 9. The BRPs' obligations under the Companies Act require transparency and good faith in executing the business rescue plan.
 10. The assertion that the sale is inevitable disregards the fact that alternative legal remedies exist to ensure a lawful and fair resolution of the matter.
 11. Our client reserves all rights and will proceed with appropriate legal action to address the irregularities in the process.

We trust that the above is in order.

Warm Regards

TIAAN VAN SCHALKWYK
Associate
D GOUWS INC t/a GOUWS ATTORNEYS
136 CAPE ROAD
MILL PARK
GQEBERHA
TEL: 041 373 0037
EMAIL: dgouws@tvsattorneys.co.za

CONFIDENTIALITY CAUTION:

If you have received this communication in error please note that it is intended for the addressee only, is privileged and confidential, and dissemination or copying is prohibited. Please notify us immediately by telephone and/or return the original message to the above address.

From: Paul Bester <paul@besters.biz>

Sent: 24 February 2025 15:27

To: dgouws@tvsattorneys.co.za; 'Pat Pattinson | Business Rescue 360'
<Patp@businessrescue360.co.za>; 'David Masterton | Business Rescue 360'
<Davidm@businessrescue360.co.za>

Subject: Re: LETTER OF DEMAND- OBJECTION TO AUCTION SCHEDULED FOR 27 FEBRUARY 2025

Dear Sir

The writer happened to be in consultation with clients when your letter arrived. Our instructions are as follow. We assume you write at the request of your client Mr Moodley. Let us not beat about the bush.

1. It is again recorded that you hold no mandate to act for and behalf of Proximitas. Only the BRP's can instruct attorneys, alternatively they must consent thereto, which they have not done. This has been canvassed with your firm before and does not deserve any further

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comment.

2. You are wrong in stating that circular number 28 is the first formal reference to the auction and business rescue position. The sale date of February 2025 was canvassed several times.
 - a. It was contained in the rescue plan and was originally earmarked for end November 2024. Your client, Mr Moodley sought a postponement of the date to get his finance in order. This request was contained in circular 25. A copy is attached hereto.
 - b. It was specifically referred to in circular 26 also attached hereto and was therein stipulated as 14 February 2025. May we suggest you peruse and consider the content thereof. The circulars and all information related to the proceedings are available on clients website www.pattinson.biz.
 - c. It was in addition shared with your client on several occasions personally one of which the writer was present. I distinctly recall the day as it was the day on which you wrote a rather confrontational letter to the BRP's. In that meeting your client discussed various options with the pending sequestration proceedings as against the Blackie Swart Trust and the failure to obtain funding and the consequences of an auction which was set in motion that very day. Your client at that time wanted to know if the auction could be stopped if he could raise the funds in time.
 - d. The BRP sent Mr Moodley an e-mail dated 17 January 2025 sharing the intended auction details and process as received from the auctioneers wherein the dates were set out.
 - e. On 25 January 2025 your client engaged with Mr Pattinson on WhatsApp wherein he transmits the auction catalogue on which the auction date appears.
 - f. In your own mail of 6 February 2025 reference is made to the sale date by yourself! Your attention is also drawn to our response thereto.
3. The content of paragraph 2 of your letter is nonsensical as it does not address any issue of relevance to the auction. No basis is set out upon which a decision can be made as requested. You respectfully appear to confuse the affairs and interests of the trust with that of Proximitas. The auction is only in respect of the sale of the property of Proximitas. This is in terms of the adopted rescue plan. The dispositions of the trust's assets is a matter to be dealt with during those insolvency proceedings. It is only relevant to the affairs of Proximitas insofar as its shareholding is concerned. The auction does not affect the shareholding. In your paragraph 2.2 you allude to our clients knowledge of the sale of shares in Proximitas. This disposition was done, as you correctly point out, long after the mandate to act for the trust was terminated and as such they were not a party to or involved in the disposition. We refer you to our e-mail dated 7 February 2025 wherein your own complicity and knowledge is set out. You were warned to "tread carefully". When it suited your client to acquire the shares, with your assistance, all was good. He now relies on the very same transaction to attempt to stop an auction. During the entire time he was legally represented.
4. Your threat of an urgent application is noted. In this regard we are instructed to formally place on record that
 - a. The BRP's were informed of an intended application as far back as their visit to the farms on 11 February 2025. The writer was present when Mr Stephanus Terblanche informed us that the parties are not on the farms and in town working on an application which he was told would be in court on Monday 17 February 2025.
 - b. No less than three attorneys have confirmed that your client intends proceedings as against the BRP's during that week as well as during last week.
 - c. In your mail of 6 February 2025 threats of urgent applications are made. You were advised that the application can be filed on our firm. How does your client intend to explain the almost three week delay.
 - d. There is no basis for any application and certainly any urgency is self-created. Such is clear from your letter under reply. A foundation is attempted to be laid to approach

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court on an urgent basis. If so we assume all the relevant facts as set above and in earlier correspondence will be placed before the presiding judge when drafting the certificate of urgency.

- e. Attorney Vosloo wrote to my clients this morning confirming the intention to launch proceedings.
 - f. Our clients are duty bound by the provisions of the act to implement the adopted plan.
5. We trust that you as prudent legal practitioner will disclose all this in your intended application. Our clients certainly will in their opposing papers.
6. Further and in any event, what would be achieved by stopping the auction. It will only delay the inevitable. It has become common knowledge that your client has severe financial challenges and creditors have obtained judgments against Mr Moodley and or his companies. The prospects of raising finance to the extent required are a fantasy unless another investor is found. The creditors are demanding action to mitigate further losses. There are no funds to continue operations and your client cannot fund it in any event. We need not refer to his obligations to Kaap Agri to pay for the staff, water and electricity which he did not do and lead to the termination of services.
7. Let one accept for the moment your client may in some or other unknown manner succeed to stop the auction or better yet the BRP's decide not to proceed therewith. Is there then a reasonable prospect of a successful rescue or better return for creditors? Will the BRP's not be compelled to consider informing the court accordingly and act in terms of section 7(k) as read with section 141(2). There is no cash on hand and your clients don't have enough to keep the ship afloat. Perhaps it is in the interest of the creditors to conduct a section 418 inquiry. There are certainly sufficient grounds for such an inquiry. These consequences were informally debated with yourself and your client. You will recall the meeting with the writer, yourself and Mr Pattinson in my office.

Regards

Paul Bester

BPACC (UPP) / Certificate for Foreign and Local Insolvency
Administration and Adjudication (UPP) / BPACC (UPP) and
Practice (UNEA), Adjudicated Courts Construction Contracts (UPP)
International Trade and Arbitration (US)

C: 082 555 2740

T: (041) 585 2200 / (041) 585 1313

E: paul@besters.biz

50A Pickering Street, Newton Park, Port Elizabeth, 6045
P.O. Box 27157, Greenacres, 6057
(Member of SARIPA & INSOL International)



From: dgouws@tvsattorneys.co.za <dgouws@tvsattorneys.co.za>

Date: Monday, 24 February 2025 at 13:17

To: 'Pat Pattinson | Business Rescue 360' <Patp@businessrescue360.co.za>, 'David Masterton | Business Rescue 360' <Davidm@businessrescue360.co.za>

Cc: Paul Bester <paul@besters.biz>

Subject: RE: LETTER OF DEMAND- OBJECTION TO AUCTION SCHEDULED FOR 27 FEBRUARY 2025

Good day,

Kindly find attached hereto legal correspondence for your urgent attention.

18
[Handwritten signature]

Warm Regards

TIAAN VAN SCHALKWYK
Associate
D GOUWS INC t/a GOUWS ATTORNEYS
136 CAPE ROAD
MILL PARK
GQEBERHA
TEL: 041 373 0037
EMAIL: dgouws@tvsattorneys.co.za

CONFIDENTIALITY CAUTION:

If you have received this communication in error please note that it is intended for the addressee only, is privileged and confidential, and dissemination or copying is prohibited. Please notify us immediately by telephone and/or return the original message to the above address.

"DM-21"

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Monday, March 31, 2025 at 16:20:27 South Africa Standard Time

Subject: FW: Payments - 17/01/2025
Date: Monday, 31 March 2025 at 16:15:48 South Africa Standard Time
From: David Masterton | Business Rescue 360
To: Paul Bester
Attachments: image001.jpg

Hi Paul,

I found this email I sent to Dean, copied Kiran. Informing them we are working under auction conditions.

David

From: David Masterton | Business Rescue 360
Sent: Friday, 17 January 2025 11:19
To: dean@doregos.co.za; Pat Pattinson | Businessrescue360 <patp@businessrescue360.co.za>
Cc: 'Kiran' <kiran@doregos.co.za>
Subject: RE: Payments - 17/01/2025

Hi Dean,

Pat and I had a meeting to discuss the expenses.

As you are aware we are under auction conditions and need Kiran needs to discuss these expenses with us.

Pachedu and Wages will be paid.

Regards
David

From: dean@doregos.co.za <dean@doregos.co.za>
Sent: Friday, 17 January 2025 11:08
To: David Masterton | Business Rescue 360 <Davidm@businessrescue360.co.za>
Cc: 'Kiran' <kiran@doregos.co.za>
Subject: Payments - 17/01/2025
Importance: High

Hi David

- CRI workshop – 4 delegates to attend – base cost applied and growers discount (R3,420.00)
- Diesel – no order was placed last week (5000l - R93,650.00)
- Stationary – provided under separate cover – attached for reference

Thanks,

Kind regards,

ms

1 of 2

"DM-22"

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IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)

CASE NO:1005/2025

In the matter between:

TWENTE PARTNERS FARMS (PTY) LTD
JOUBERT CITRUS (PTY) LTD
GOLDEN RIDGE FARMING (PTY) LTD
TIBSHRAENY CITRUS ENTERPRISES (PTY) LTD

First Applicant
Second Applicant
Third Applicant
Fourth Applicant

and

JOHANN SWART
KIRAN MOODLEY

First Respondent
Second Respondent

THE MANAGERS, EMPLOYEES AND/OR
OCCUPANTS OF THE FARMS GOOD HOPE
BED & BREAKFAST, GOOD HOPE PACKHOUSE,
GROOTE SCHUUR & BEGINSEL, LAFRANETTE,
MOREWAG AND WATERKLOOF, DISTRICT NQWEBE
(FORMERLY KIRKWOOD)

Third Respondents

SUPPLEMENTARY AFFIDAVIT

I, the undersigned,

FRANCOIS JOUBERT

sej.



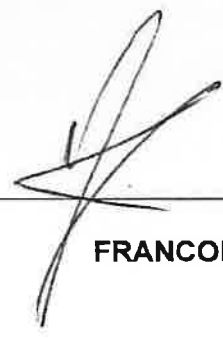
do hereby make oath and state that:

1. I am an adult male farmer residing at Peperlaan Plaas, Nqweba, Eastern Cape. I have deposed to a confirmatory affidavit in this matter before and hereby wish to state my personal knowledge of the events on Monday, 17 March 2025.
2. The contents of this affidavit fall within my personal knowledge and are both true and correct.
3. I received word from my neighbours that there was a gathering of several hundred individuals on the farm Good Hope Packhouse, which I purchased at the online auction as set out in the founding affidavit.
4. Upon my arrival I took a video recording which I shall make available at the hearing of the matter. On the video recording it shows that I approached the Packhouse and saw several dozen individuals outside. I was advised that it is seasonal workers applying for work for the upcoming harvest.
5. I managed to get hold of one of the individuals, one Anathi Nkowana, who showed me a document wherein she applied for the position as cleaner and that the application for appointment is to a company known as Blue Crane Organics.

SCJ

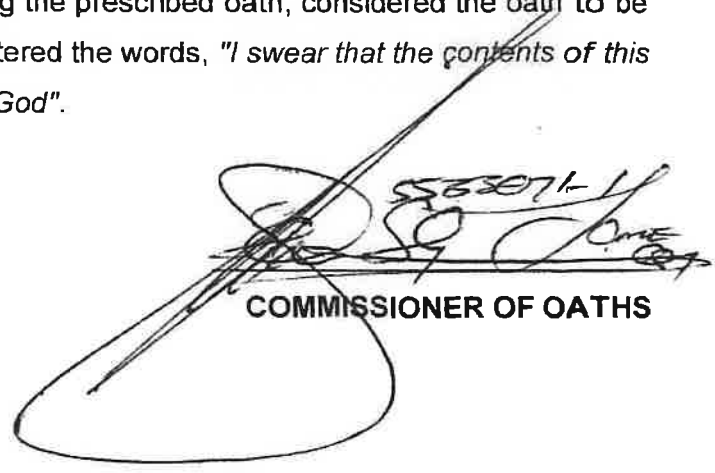


6. Blue Crane Organics is the company of the Second Respondent and of which he is the sole director. It appears as if they are attempting to employ employees through that entity. I attach the application for employment hereto as Annexure "FJ1" and the CIPC printout of Blue Crane Organics as Annexure "FJ2".
7. Blue Crane Organics does not own any of the farms, did not bid on the auction and has no right to the Packhouse property.


FRANCOIS JOUBERT

I certify that on the 17th day of **MARCH 2025** and in my presence at **GQEBERHA** the Deponent, having acknowledged that he knew and understood the contents thereof, had no objection to taking the prescribed oath, considered the oath to be binding on his conscience and uttered the words, "*I swear that the contents of this declaration are true, so help me God*".

CHAPPEL POLICE STATION VICE
SPOL
2025-03-17
STATION COMMANDER
SUID-AFRIKAANSE POLISIE


COMMISSIONER OF OATHS



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Monday, March 17, 2025 at 14:04:15 South Africa Standard Time

Subject: (none)
Date: Monday, 17 March 2025 at 14:02:56 South Africa Standard Time
From: Paul Bester
To: Paul Bester
Attachments: PHOTO-2025-03-17-10-35-31.jpg

09:59 71%

< kirkwood seasonal jobs

All Posts People Groups Events Videos

 **KIRKWOOD SEASONAL JOBS**   
Xolile Dibashe Befile · 23h · 

Molweni guys, ndikhona for tax number (R20)
ngaseDameni ePlatini phezulu.
WhatsApp: 078 747 4108
Call: 066 513 5151
Anytime ndi available
A friendly reminder ! ! !

BLUE CRANE ORGANICS
ATTENTION
SEASONAL WORKERS
(Packhouse Pickers)

Applications for the 2025 season will take place on

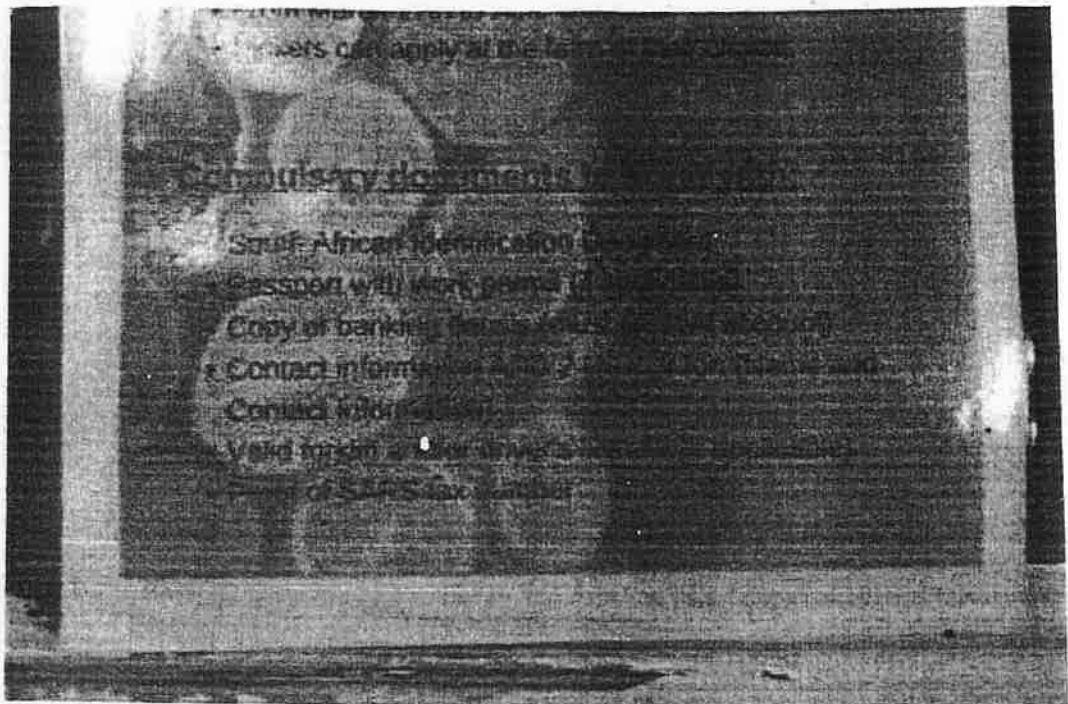
Packhouse Worker Applications

- 17 and 18 March 2025
- Time: 9:00 AM to 4:00 PM
- Transport from Moses Motaung and Agnes
- Park/Bergs will be available on these dates.

Picker Applications



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□

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Sent from my iPhone

Handwritten signatures and initials, including a large stylized signature and the letters 'R' and 'A'.

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Monday, March 17, 2025 at 10:54:26 South Africa Standard Time

Subject: EN
Date: Monday, 17 March 2025 at 10:54:26 South Africa Standard Time
From: Paul Bester
To: Paul Bester, Pat Robinson Business Rescue, David Muckleton Business Rescue 360
Attachments: PHOTO-2025-03-17-10-30-00.jpg

Blue Crane Organics

Application For Employment Details Form

Position applied for: Cleaner ☒ Permanent ☐ Probation

Name: ANATI
Surname: NKOIWAHANA

Identity Number / Passport Number: 88082711280061 Expiry Date:
Work permit No: 27-08-1988 Age: 36
Date of Birth: 1923-08-27 Place of Birth: PARK WATERS
Physical Address: KIRKWOOD
AD00
6120

Area Code: _____

Home Tel No: _____

Cell Phone No: 063 45 69 794

Drivers License: ☐ Yes ☐ No

Code: _____

Qualifications: GRADE 10

Sent from my iPhone



BLUE CRANE ORGANICS
(2024/578906/07)
CIPC Company

2 Waterford Mews, Century City, Cape Town, 7441
Tel: +27 87 330 7577 - NCR Reg No. NCR0630
Website: <https://www.searchworks.co.za>

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SEARCH INFORMATION

Summary

Search Type	CIPC COMPANY
Search Description	BLUE CRANE ORGANICS (2024/578906/07)
Reference	DEBBIE
Date	12/03/2025

COMPANY INFORMATION

Summary

Name	BLUE CRANE ORGANICS
Registration Number	2024/578906/07
Type	PRIVATE COMPANY (PTY) LTD
Status	IN BUSINESS
Registration Date	12/09/2024
Average Age of Director	35

SARS VERIFICATION MATCHES

Trading Name	VAT Registration Number	Area
No information available.		

PREVIOUS COMPANY NAMES

Old Company Name	Date Changed
No information available.	

ACTIVE DIRECTOR(S)

Director Name	ID Number	Status	Type	Appointed
KIRAN MOODLEY	B909105107 084	ACTIVE	DIRECTOR	12/09/2024

RESIGNED DIRECTOR(S)

Director Name	ID Number	Status	Type	Appointed	Resigned
No information available.					

DECEASED DIRECTOR(S)

Director Name	ID Number	Status	Type	Appointed
No information available.				

OTHER DIRECTOR(S)

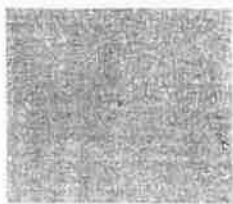
Director Name	ID Number	Status	Type	Appointed
No information available.				

Handwritten signatures and initials.

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DIRECTOR TIMELINE

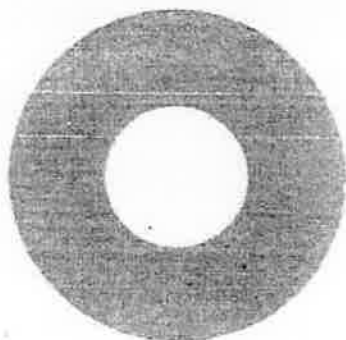
Station (Optional: Per Year)



Director (Optional: Per Year)

DIRECTOR GENDER

Gender Breakdown (%)



Male Female

AUDITOR(S)

Auditor Name

Profession Code

Status

Start Date

No information available

Handwritten signatures and initials, including "MB" and a large stylized signature.

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COMPANY INFORMATION

Summary

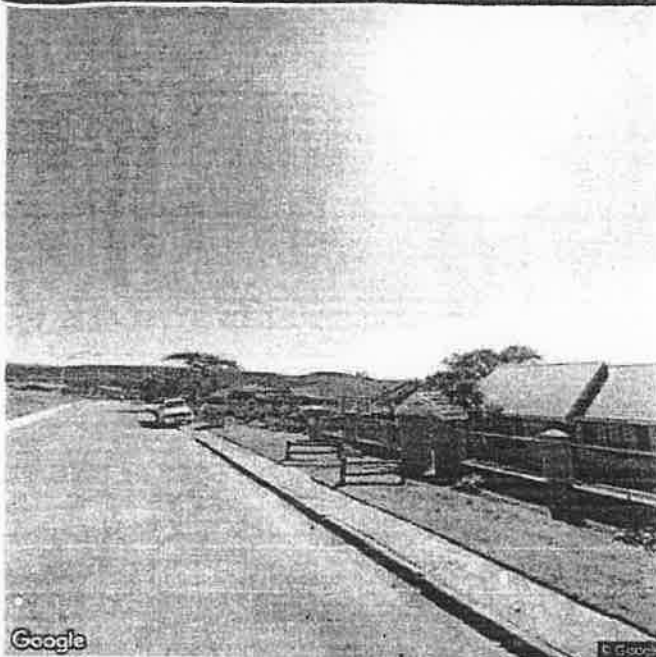
Name	BLUE CRANE ORGANICS
Short Name	.
Translated Name	BLUE CRANE ORGANICS (2024/578906/07)
Registration Number	2024/578906/07
Old Registration Number	.
Type	PRIVATE COMPANY (PTY) LTD
Short Type	(PTY) LTD -
CIPC Company Act Type	COMPANY (REGISTERED ACCORDING TO NEW 2008 CO ACT)
Status	IN BUSINESS
Tax Number	9240457276
Type Date	12/09/2024
Registration Date	12/09/2024
Start Date	12/09/2024
Status Date	.
Principal Description	BUSINESS ACTIVITIES NOT RESTRICTED.
Details Withdrawn From Public	NO
Standard Industrial Classification	.
Financial Year End	FEBRUARY
Financial Effective Date	.
Registered Address	8 BURTON AVENUE, VANES ESTATE, KARIEGA, EASTERN CAPE, 6230
Postal Address	8 BURTON AVENUE, VANES ESTATE, KARIEGA, EASTERN CAPE, 6230
Region	.
Country of Origin	.
Country	SOUTH AFRICA
Authorised Capital	-1.00
Issued Capital	-1.00
Authorised Shares	100.00
Issued Shares	-1.00
Form Received Date	.
Date on Form	.
Conversion Number	.

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OF ONE SPIRIT INT



Little Coffee Bean



Dentist on Smuts

Mi Casa Guest House

Wintehook Dr

Su Casa B&B

R-Tec Motorsport

VANES ESTATE

Graaff-Reinet Rd

Carinus

Google

Map data ©2025 AfriGIS (Pty) Ltd, Google

DIRECTOR(S)

Director 1 of 1

First Name	KIRAN
Surname	MOODLEY
ID Number	8909105107084
Date of Birth	10/09/1989
Gender	MALE
Age	35
Residential Address	8 BURTON AVENUE, VANES ESTATE, KARIEGA, EASTERN CAPE, 6230
Postal Address	8 BURTON AVENUE, VANES ESTATE, KARIEGA, EASTERN CAPE, 6230
Type	DIRECTOR
Status	ACTIVE
Appointment Date	12/09/2024
Member Contribution	0.00%
Member Size	0%

AUDITOR(S)

No information available

CAPITAL INFORMATION

Type	Capital Amount	Capital Premium	Number of Shares	Parl Value
AUTHORIZED ORDINARY	R0.00	0	100.00	1

CHANGE HISTORY

No information available

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REPORT INFORMATION

Date of Information 12/03/2025 10:34
Print Date 12/03/2025 10:35
Generated By DEBBIE KELLY
Reference DEBBIE
Report Type CIPC COMPANY



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AM. 187

"DM-23"

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**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION - MAKHANDA**

Case No: 1005/2025

In the matter between:

TWENTE PARTNERS FARMS (PTY) LTD

First Applicant

JOUBERT CITRUS (PTY) LTD

Second Applicant

GOLDEN RIDGE FARMING (PTY) LTD

Third Applicant

TIBSHRAENY CITRUS ENTERPRISES (PTY) LTD Fourth Applicant

and

JOHANN SWART

First Respondent

KIRA MOODLEY

Second Respondent

THE MANAGER, EMPLOYEES AND/OR OCCUPANTS

OF THE FARMS GOOD HOPE BED & BREAKFAST,

GOOD HOPE PACKHOUSE, GROOTE SCHUUR AND

BEGINSEL, LAFRANETTE, MOREWAG AND

WATERKLOOF, DISTRICT NQWEBE

(FORMELY KIRKWOOD)

Third Respondent

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JUDGMENT

MALUSI J:

[1] This is an application for an interdict, brought on an urgency basis, to grant the applicants access to various farms. The application also seeks to restrain access of the first and the second respondents from the same group of farms. The restraint is extended to the first and the second respondents contacting, communicating and interfering with services of the employees and occupants of the farms who are the third respondents in the application. The third respondents did not participate in the application and whenever the term 'respondents' is used in this judgment it refers only to the first and the second respondents. The application is vigorously opposed by the respondents. At the start of the hearing the parties agreed, in accordance with practice in this division, the application would be for final relief as all sets of papers had been filed and full argument will be received by court.

[2] Both parties have filed unnecessarily prolix papers. The prolixity was exacerbated by a poor set of papers on both sides, as correctly admitted by *Mr Smuts* who disavowed any participation in drawing the respondents' papers. They have approached the matter as if it were a review of the business rescue. The main issue is access to the farms and the relief relating to contact/communication/interfering with the third respondents. Due to the exigencies of time and the state of the papers I will not deal with all the issues in as much detail as I would have intended.

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MM

[3] The dispute emanates from the sale of a group of six (6) citrus farms located in *Nqweba (formerly Kirkwood)*, 'the centre of one of the largest citrus growing regions in the Republic'. The farms were previously owned by *Proximitars Investments 60 (Pty) Ltd (Prox)*. The company got into financial difficulties due to a variety of reasons. On 28 November 2023 the then directors of *Prox* adopted a resolution that the company institutes business rescue proceedings.

[4] On 10 October 2024 the *Blackie Swart Familie Trust (the Trust)*, the sole shareholder of *Prox* sold its entire shareholding to *Blue Crane Organics (BCO)* for R1 000.00 barely a month after the latter had been registered. The sole shareholder and the director of *BCO* is the second respondent. The *Trust* was provisionally sequestrated on 30 January 2025.

[5] *Mr Quinton Pattison* and *Mr David Masterton* were appointed as business rescue practitioners (*BRP's*) on 29 November 2023. Following a number of attempts, on 28 October 2024 a final business rescue plan was adopted. The object of the plan was to dispose of the assets of *Prox*. A scheme was developed on the course to be followed in the sale of the assets.

[6] The second respondent was the first person out of the blocks and made a formal offer to purchase the assets to the *BRP's*. Despite numerous engagements the offer failed principally due to lack of financial guarantees to the satisfaction of the *BRP's*.

[7] A public auction to invite bids for the various farms was arranged and later cancelled. Another auction of the farms was scheduled for 27 February

MS
[Signature]

2025. On the eve of the auction, 26 February 2025 to be precise, an urgent application against the *BRP's* and their company was launched to interdict the auction. The application by the first and second respondents together with others purporting to act on behalf of *Prox* and the *Trust* was moved before *Laing J.* The application was dismissed with costs.

[8] The auction proceeded with the applicants individually submitting successful bids for the respective farms. The sales and acceptance of the bids by the *BRP's* were subject to approval by *ABSA* who held the properties as security for debt owed by *Prox*. *ABSA* later confirmed in writing that it accepted the bids. On 10 March 2025 the *BRP's* granted the applicants occupation and access to the farms which is the time the respective sales formally came into effect. It was a specific condition of each of the sales that the responsibility to gain access and occupation lay with each applicant for the respective farms.

[9] A director of the first applicant stated that on 11 March 2025 he and a co-director visited the farm known as *Good Hope B&B* for which the first applicant successfully bid *R25 645 000.00* inclusive of commission. They were accosted at the gate of the farm by a guard who did not identify himself. This guard informed them that he reports to the first respondent and the directors were not allowed to enter the farm. Regardless, the directors opened the gate and entered.

[10] In the afternoon of the same day the co-director returned to the farm. He found the gates locked with a padlock. The same guard was still manning the gate.

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[11] On 10 March 2025 a director of the second applicant visited the farm, *Good Hope Packhouse* for which the second applicant successfully bid *R58 531 500.00* including commission for an inspection. He found the gates closed and locked. He was told by a person who identified himself as *Dennis* that the first and second respondents instructed him not to allow any person to enter the farm.

[12] On 12 March 2025 the director received a call from *Magdeline Scritch* relaying a message from *Marika Swart*. The latter had apparently told the former that the farms had not been sold and the first respondent will hold a staff meeting at noon.

[13] The second applicant applied and was granted leave to file a supplementary affidavit. A director of the second applicant stated that on 17 March 2025 he attended at the farm. Outside the farm he found a crowd of people whom he later learnt were seasonal workers applying for work during the upcoming harvest. *BCO*, earlier referred to in para 4 above, was conducting the recruitment of the workers.

[14] The third applicant bought three (3) farms for a consolidated amount of *R23 557 000.00* excluding commission and other costs. A farm manager in the employ of the third applicant was instructed by a director to conduct an inspection of the farms after 10 March 2025.

[15] Access to the farms was denied by two (2) farm managers who claimed to be in charge of the three (3) farms. The two (2) managers claimed to be

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WMA

acting on the instructions of the respondents who had told the former that the sale of the farms was unlawful. Legal action was said to be pending at the time and the two (2) managers had to prevent access to third applicant until finalization of the legal action according to the instruction.

[16] The fourth applicant bought a farm for R4 292 750.00 inclusive of commission. A director of the fourth applicant visited the farm for an inspection on 10 March 2025 after the sale had been concluded. He found the gate closed and locked. He was told by a person at the farm gate that the first respondent had instructed the former that no one was allowed to enter the farm.

[17] The fourth applicant filed a supplementary affidavit after leave had been granted by court. A director of the fourth applicant stated that he was able to gain unhindered access to *Lafranette* farm during the weekend of 14 to 16 March 2025. However, on the morning of Monday, 17 March 2025 he found the farm gate locked with a chain and padlock. He was unable to gain access due to the clamped gate.

[18] The respondents resist the application on a number of grounds listed in their answering affidavits. They assert that:

- 18.1 the applicants have no clear right to the properties in question.
- 18.2 the sale of the properties is irregular as there are serious legal and procedural concerns.
- 18.3 the urgency is self-created.
- 18.4 the applicants have failed to comply with the statutory requirements for occupation including Transfer Duty Act, Deeds Registry Act and PIE.

✓
DM

18.5 the applicants have not provided the necessary documentary proof confirming the lawfulness of the transactions including financial approvals and regulatory compliance documents.

18.6 the relief sought is vague, overbroad and lacks proper legal foundation.

[19] The primary thrust of the respondents' defence was that the averments in the applicants' affidavits implicating the respondents as having issued instructions for access to be denied are hearsay. As such they should be excluded due to the fact that they are inadmissible evidence and there is no basis for their admission as provided in *Section 3(4) of the Law of Evidence Amendment Act*¹.

[20] *Mr Du Toit*, the applicants' counsel, submitted that they do not rely on the hearsay evidence implicating the respondents. They sought to rely only on the fact that applicants were denied access. The reasons provided by the employees that denied the access were not be relied upon.

[21] There can be no credible denial that the allegation by the various employees of acting on instructions of the respondents, viewed in isolation, amounts to hearsay evidence. However, the peculiarity of the respondents' answering affidavits is that for all intents and purposes they do not substantively deny having issued the instruction. They stated:

- '*the applicants have no right of possession of the farms.*'
- '*...as long as the disputes remain, occupation cannot be granted.*'

¹ Act 45 OF 1988.

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[Signature]

(195)

- *'there would be no unlawful occupation pending resolution of disputes.'*
- *'In the absence of clear and undisputed ownership and transfer, the locking of the gate cannot be construed as unlawful.'*

[22] The above excerpts and others in the answering affidavits clearly indicate the respondents support the refusal of access. The lack of credible denials by respondent of having given the instructions favours admission of the hearsay allegations. The respondents stated that they were in charge of the day to day operations of the farms. The first respondent claimed to have invested R5000 000.00 of his own money in running the farms. Clearly in these circumstances, the employees/occupants took instructions from the respondents. The justification in the excerpts dovetails with the hearsay.

[23] In my view, it will be pedantry to exclude the hearsay in the face of the statements by respondents which dovetails with the hearsay. Many times, the respondents use the same language as that in the hearsay. It appears to me that on the papers, as read holistically, the persons upon whose credibility the probative value of the statements depends (*the respondents*) have indirectly or inadvertently confirmed the statements. The rigid and formulaic exclusion of hearsay evidence is eschewed in the *Law of Evidence Act*. In my view, it will promote form above substance to exclude the hearsay evidence when the person upon whom the credibility depends has essentially confirmed it. I say so alive to the fact that the question of admission is anterior to any other determination.

14

AM

[24] The legal principles relating to interdicts are settled in our law. The requisite for the grant of a final interdict are the following:

- 24.1 A clear right on the part of the applicants.
- 24.2 An injury actually committed or reasonably apprehended.
- 24.3 The absence of any other satisfactory remedy available to the applicant.

[25] The respondents acknowledge that *'the BRP's have unilaterally granted occupation'* to the applicants. The legal underpinnings of this decision are trenchantly criticized. The respondents also accept that the various sale agreements between the *BRP's* and the applicants provide for a date on which the various offers by the applicants are accepted by the *BRP's* to be called the acceptance date. It is admitted by the respondents that in terms of the same clause in the various contracts the applicants have been granted occupational rights to the farms from the acceptance date onwards. The respondents attack the legal validity of the contracts on various grounds.

[26] In my view, the applicants have proved that each of them has a clear right to access and occupy the respective farms. *Section 140(1)(a) of the Companies Act 71 of 2008 (the Act)* provides that the *BRP* has full management control of the company in substitution for its board and pre-existing management. This provision clothes the *BRP* with all the power and authority that previously resided with the board and management.

Logic dictates that if the board and management previously had the authority to grant access to company property (*the farms*) to a third person, then the authority currently resides with the *BRP*. In my view, the *BRP's* had the requisite authority to grant access to the farms to the applicants. Such is original authority arising merely from their appointment as *BRP's* in

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accordance with *s140(1)(a)*. This original authority has not been challenged at all by the respondents. As such the *BRP*'s had the authority to grant access to applicants even without the sale agreements

[27] Furthermore, it is common cause the *BRP*'s have concluded agreements of sale of the farms with the applicants. It has not been disputed that the object of the final business rescue plan was to dispose of the assets of *Prox*. The auction and sale agreements are existent and have not been set aside by any court. Until set aside the auction and sale agreements must be given effect. Even if the respondents were correct in their assertions of irregularities and unlawfulness, the *Oudekraal* principle provides that '*an unlawful act can produce legally effective consequences.*'

[28] *Section 20(7) of the Act* protects the applicants as bona fide third parties dealing with *Prox*. The section provides that a third party is entitled to assume that the company has complied with all formal and procedural requirements in terms of the Act, memorandum of incorporation and any company rules unless the third party knew or ought to reasonably have known of failure by the company to comply with such requirements. There has not been any allegation that the applicants knew or ought to have known of any irregularity or unlawfulness. As such their rights are unaffected by any failure by the *BRP*'s to comply with *Prox* internal requirements

[29] In an attempt to prove an injury actually committed each of the applicants have alleged that either a director or an employee has been prevented from entering the respective farms. The gates were locked with a chain and padlock. Except for the first applicant, representatives of the other

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applicants met various people in the respective farms who stated they were acting on the instructions of the respondents in denying them access to the farms. It was further alleged farming operations had ceased in all the farms. It was stated the applicants' substantial investments in purchasing the farms were at risk of further damage to property. The injury is ongoing as the orchards are not irrigated daily as required due to the prevailing high temperatures. Some water pumps are broken and need to be urgently replaced. All the papers disclose that these are productive farms with planted orchards which need care and maintenance.

[30] Importantly, the respondents have not categorically denied issuing the instruction for access to be denied to the applicants. They have asserted an entitlement *'to prevent unlawful dispossession or prejudicial occupation pending resolving disputes they have raised with the business rescue process'*. On another occasion they have claimed to be enforcing rights against the process. They have committed *'to take all necessary steps to oppose occupation of the farms by the applicants'* (Own emphasis).

[31] It is of immense importance that the *'all necessary steps'* envisaged by the respondents do not exclude unlawful acts. A reading of the answering affidavit as a whole clearly states that the respondents justify the denial of access to the applicants. I find no merit in the convoluted justification of self-help by the respondents. In the event there were irregularities or unlawfulness in the business rescue process they should have approached the court for appropriate relief. Self-help is rarely, if ever, justified in our law.

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[Signature]

[32] The applicants have asserted that they have no other satisfactory remedy available to them. It was submitted that the denial of applicant's rights is continuing which renders an award of damages impossible. The continuous violation of the applicants' rights renders the grant of interdict appropriate, even if damages were capable of quantification². It was further argued that such an award may be beyond the means of the respondents, especially the third respondents.

[33] I find merit in the applicants' submissions. The group of farms at issue are clearly assets of very substantial value. The ongoing damage to the farms due to lack of access of applicant to mitigate the losses may well be beyond the ability of the respondents. The law does not require an applicant to endure ongoing violation of rights if the respondent is able to pay the damages incurred. Protection of property is one of the fundamental principles of our law. I agree that there is no other satisfactory remedy available to applicants.

[34] *Mr Smuts* pertinently raised the point that the first respondent resides at *Waterkloof*. The effect of granting the interdict restraining him from accessing *Waterkloof* is to evict him from the farm. *Mr Du Toit* correctly conceded this point.

[35] I find merit in the submission. The only legal avenue to evict a person from a primary residence on a farm (*agricultural land*) is by following the provisions of the *Extension of Security of Tenure Act (ESTA)*³. This specific relief sought by applicants against the first respondent will not be granted.

² *Fani & Another v Tshantshana & Others* ZAECBHC 32) at para 19.

³ Act 62 of 1997.

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[36] *Mr Smuts* argued that the founding affidavit should be set aside as the deponent who is the *BRP* was not mandated to depose to it.

[37] The submission only has to be made for it to be rejected. It is trite in our law that it is not required for a deponent to be authorised to depose to an affidavit. It is only the initiation of the application that must be authorised.⁴

[38] *Mr Smuts* argued that the third respondent was not properly served the application in accordance with the directive issued by *Tokota J.* No order may be issued against the third respondents in such circumstances. Any order against the respondents in such circumstances will be pointless.

[39] I find no merit in the submission. The directive required service on all respondents by email. The applicants instructed the sheriff to effect service of the application on all the respondents. The third respondent was served by the sheriff by affixing the application papers to the door at the office in *Good Hope Farm, on Marika Swart* at *Packhouse* farm, affixing to the entrance gate at *Groote Schuur, Beginsel* and *Morewag* farms. The application was served on the director of the fourth applicant at *Lefranette* farms. This farm is entirely an orchard with no employees or occupants residing in it. Thus, the irregular service has no consequences.

[40] In my view, there has been better service than required in the directive. It is idle to speculate whether the application has come to the notice of the

⁴ *Eskom v Soweto City Council* 1992 (2) SA 703 (W) 705D-H; *Ganes v Telecom Namibia* 2004 (3) SA 615 (SCA) at 624 I0625; *Unlawful Occupiers, School Site v City of Johannesburg* 2005 (4) SA 199 (SCA).

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third respondent. Proper service has been effected on the third respondent and nothing more was required.

[41] It is necessary to consider the issue of costs. The matter came before court on Tuesday, 18 March 2025. It was postponed that day due to the second and fourth applicants filing supplementary affidavits. The respondents elected to file answering affidavits, as they were entitled to do. In my view those two applicants must bear the costs occasioned by the postponement.

[42] The matter was before court on Saturday, 22 March 2025. It was postponed on that day due to the respondents' attorney withdrawing as a result of ethical considerations. The respondents applied for a postponement due to Counsel having been compelled to withdraw as he had no instructing attorney. In my view, the respondents must bear the costs occasioned by the postponement.

[43] The applicants have filed an application to strike out the entire answering affidavit alternatively specific sections of it. In an effort to avert a postponement on 22 March 2025 *Mr Du Toit* withdrew the application.

[44] On 27 March 2025, *Mr Smuts* sought the costs of the striking out application which was withdrawn on 22 March 2025. In my view, by that time the proverbial horse had bolted. No notice has been filed indicating a request for a costs order. I am aware that ordinarily the respondents would have had ten (10) days after the withdrawal of the striking out application within which to seek the costs order. However, in the circumstances of this urgent application, the respondents had three (3) court days within which to file the

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requisite notice but failed to do so. Throughout the application hearing from 18 March 2025 the respondents had insisted on scrupulous adherence by applicants to every rule applicable. The respondents in the peculiar circumstances of this case ought to be held to the same standards they insisted upon.

[45] *Mr Du Toit* had argued that the first respondent had averred '*blatant lies*' in the answering affidavit. These had been disproven in the replying affidavit. *Mr Smuts* strongly protested on the accusation contending it was not justified. He also complained that *Mr Du Toit* had corrected before the hearing.

[46] In the peculiar circumstances of this case it is not necessary to make a ruling on this issue. However, I agree with *Mr Smuts* that using phrases like '*blatant lies*' is most unfortunate. Only in the clearest of instances must such words be used but even then as a matter of last resort.

[47] The applicants have sought costs on a punitive scale. No justification for such a scale has been provided by applicants in their affidavits. In the heads of argument it has been stated such a scale would show the court's displeasure with the conduct of the respondents.

[48] I do not agree. As unfortunate as the respondents' conduct into taking the law into their own hands, it does not justify a punitive costs order in the peculiar circumstances of this case. As utterly wrong and misguided as the respondent have conducted themselves, they appear to have bona fide

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believed that due the alleged irregularities and unlawfulness by the *BRP's*, the conduct was justified.

[49] In the result, the following order will issue:

49.1 The first and second respondents are ordered to grant applicants and/or their representatives immediate access to the following farms situated in the district of Nqweba (*formerly known as Kirkwood*);

49.1.1 The farm Good Hope Bed & Breakfast;

49.1.2 The farm Good Hope Packhouse;

49.1.3 The farm Groote Schuur & Beginsel;

49.1.4 The farm Lefranette;

49.1.5 The farm Morewag; and

49.1.6 The farm Waterkloof.

49.2 The first, second and third respondents are interdicted and restrained from denying the applicants access to any of the properties listed in paragraph 46.1 above;

49.3 The first and second respondents are interdicted and restrained from accessing the farms listed in paragraph 46.1 above, save that the first respondent is granted unfettered access to the farm Waterkloof for residential purpose until ordered otherwise by a competent court;

49.4. The first and second respondents are interdicted and restrained from in anyway contacting and/or communicating and/or

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interfering with the services of the current employees and/or occupants of the farms listed in paragraph 46.1 above;

49.5 The reserved costs of the postponement on 18 March 2025 shall be paid by the second and fourth applicants;

49.6 The reserved costs occasioned by the postponement on 22 March 2025 shall be paid the first and second respondents;

49.7 There shall be no order as to costs relating to the application to strike out brought by the applicants;

49.8 The costs of this application are to be paid by the first and second respondents on scale C, jointly and severally, the one to pay the other to be absolved.



T MALUSI
JUDGE OF THE HIGH COURT

Appearances:

For the Applicants:

Advocate Du Toit *instructed by*
Besters Attorneys
50 Pickering Street
Newton Park
GQEBERHA
c/o Netteltons Attorneys
118 High Street
MAKHANDA

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For the 1st and 2nd Respondents:

Advocate Smuts SC *instructed by*
D Gouws Inc Attorneys
136 Cape Road
Mill Park
GQEBERHA
c/o Nolte Smit Attorneys
51A Hill Street
MAKHANDA

Heard:

18, 22 & 27 March 2025

Delivered:

1 April 2025

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"DM-24" (WB)

Tuesday, April 1, 2025 at 09:42:35 South Africa Standard Time

Subject: Urgent Notice - Unlawful Occupation of Proximitas Investments 60 (Pty) Ltd Property
Date: Friday, 28 March 2025 at 12:18:15 South Africa Standard Time
From: dgouws@tvsattorneys.co.za
To: 'Pat Pattinson | Business Rescue 360', 'David Masterton | Business Rescue 360'
CC: Paul Bester
Attachments: Kirkwood house.pdf

Dear Business Rescue Practitioners

We act on behalf of Kiran Moodley, the director of Proximitas Investments 60 (Pty) Ltd ("Proximitas"), as well as the for the director of the shareholder in Proximitas. We write to bring to your immediate attention the unlawful occupation of the property situated at 1 Angle Street, Kirkwood, 6120, which remains an asset of Proximitas.

It has come to our client's attention on 27 March 2025, unknown individuals took occupation of the property without Proximitas' consent. The individuals claimed to be acting on behalf of Michael Ehlers, the purported purchaser of the property at the recent auction. It is further noted that:

The property has not yet been transferred to the purchaser.

The sale agreement does not authorise the purchaser to take occupation before registration of transfer, as per the agreement attached hereto.

The locks have been changed without Proximitas' authorisation, preventing our client's appointed representative, Ms. Marika Swart, from accessing the property.

The property still contains movable assets belonging to Proximitas, including tools, equipment, and a vehicle.

As the appointed Business Rescue Practitioners, you remain responsible for ensuring compliance with the business rescue plan and the lawful management of Proximitas' assets. The purchaser's actions amount to unlawful occupation, trespassing, and spoliation, and we request your urgent intervention to ensure the immediate restoration of possession to Proximitas.

We hereby demand with urgency:

1. Confirmation in writing by close of business today on whether you have authorised, permitted, or been made aware of this unlawful occupation.
2. Take immediate steps to secure the property and restore access to Proximitas.
3. Direct the purchaser to vacate the premises immediately, failing which our client will be left with no alternative but to approach the High Court on an urgent basis for a spoliation order and possible eviction proceedings.

Failure to act in this regard may result in legal consequences, including holding the BRPs accountable for any loss or damage suffered due to the unauthorised occupation. We reserve our client's right to take all necessary legal steps to enforce their rights.

We await your urgent response.

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Warm Regards

TIAAN VAN SCHALKWYK
Associate
D GOUWS INC t/a GOUWS ATTORNEYS
136 CAPE ROAD
MILL PARK
GQEBERHA
TEL: 041 373 0037
EMAIL: dgouws@tvsattorneys.co.za

CONFIDENTIALITY CAUTION:

If you have received this communication in error please note that it is intended for the addressee only, is privileged and confidential, and dissemination or copying is prohibited. Please notify us immediately by telephone and/or return the original message to the above address.

rb

[Handwritten signature]

"DM-25"

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Tuesday, April 1, 2025 at 09:44:00 South Africa Standard Time

Subject: Re: Urgent Notice - Unlawful Occupation of Proximitas Investments 60 (Pty) Ltd Property
Date: Friday, 28 March 2025 at 16:57:13 South Africa Standard Time
From: Paul Bester
To: dgouws@tvsattorneys.co.za, 'Pat Pattinson | Business Rescue 360', 'David Masterton | Business Rescue 360'
Attachments: image001.png

Dear Sir

You have formally at court withdrawn as Mr Moodley's attorney of record. Kindly provide us with the relevant power of attorney that you are so mandated to act for Mr Moodley and the shareholder Blue Crane.

We further suggest that your client familiarise himself with the Companies Act and the role of rescue practitioners. We have done so at least twice in the past and clients do not intent to waste time explaining the law to him. He has also not even taken the time to study the agreement properly with specific reference to clause 2.4 of annexure "A".

Regards

Paul Bester

CPRO (CPRO) is a member of the Companies Act (CPA) and is a member of the Insolvency Practitioners Association (IPA) and the South African Arbitration Association (SAAA).
CPRO (CPRO) is a member of the Companies Act (CPA) and is a member of the Insolvency Practitioners Association (IPA) and the South African Arbitration Association (SAAA).

C: 082 555 2740

T: (041) 585 2200 / (041) 585 1313

E: paul@besters.biz

50A Pickering Street, Newton Park, Port Elizabeth, 6045

P.O. Box 27157, Greenacres, 6057

(Member of SARIPA & INSOL International)



From: dgouws@tvsattorneys.co.za <dgouws@tvsattorneys.co.za>

Date: Friday, 28 March 2025 at 12:18

To: 'Pat Pattinson | Business Rescue 360' <Patp@businessrescue360.co.za>, 'David Masterton | Business Rescue 360' <Davidm@businessrescue360.co.za>

Cc: Paul Bester <paul@besters.biz>

Subject: Urgent Notice - Unlawful Occupation of Proximitas Investments 60 (Pty) Ltd Property

Dear Business Rescue Practitioners

We act on behalf of Kiran Moodley, the director of Proximitas Investments 60 (Pty) Ltd ("Proximitas"), as well as the for the director of the shareholder in Proximitas. We write to bring to your immediate attention the unlawful occupation of the property situated at 1 Angle Street, Kirkwood, 6120, which remains an asset of Proximitas.

It has come to our client's attention on 27 March 2025, unknown individuals took occupation of the

"PM-26" (209)

Tuesday, April 1, 2025 at 09:18:50 South Africa Standard Time

Subject: PROXIMITAS 60 INV (PTY)LTD IN BUSINESS RESCUE
Date: Friday, 28 March 2025 at 14:52:21 South Africa Standard Time
From: Fabi-Olynn Koraan
To: zaint@wh.co.za
CC: Paul Bester

JOHAN CRONJE

Attorneys/Conveyancers
25 Upper Drosty Street, Kariega, 6230

We represent that Trustees of the Elmare Trust

1. Our clients bid on an online auction for the property situated at 10 Clarendon Avenue, Vanes Estate, Kariega.
2. Our clients bid for the purchase price of R1 966 650.00 was accepted on the 14 March 2025.
3. Since acceptance of the offer our client has been struggling to obtain access to the property as the current occupant of the property (a certain Madelaine Gerber) refuses to co-operate with our client.
4. On enquiry it appears the said occupant has been instructed by the director and shareholder of Proximitas 60 INV (PTY)LTD not to engage with any party, not to take any telephone calls and not to discuss the issue with any party. She has furthermore been instructed to remain in occupation of the property.
5. We can confirm that we attempted on numerous occasions to contact Mrs Gerber, and her ex-husband to no avail.
6. We were then referred to Tiaan van Schalkwyk, from Danie Gouws Attorneys who apparently represents the Director and Shareholder of Proximitas. According to Mr van Schalkwyk the Director and Shareholder was not aware of the sale of 10 Clarendon Street and they have been instructed to apply to Court to set this sale aside.
7. The above situation is obviously detrimental to our client as purchaser of this property and we request you kindly advise what the current state of the business rescue is and whether there is any danger of court applications to set the auction aside. m6



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8. Our client has also not been contacted by the Conveyancing Attorneys who you have appointed and request that you kindly expedite the transfer process.

We look forward to hear from you.

COLIN MAC KENZIE

Per Fabi-Olynné Koraan

JOHAN CRONJE ATTORNEYS

TEL: (041) 9220541

Whatsapp: 072 037 2174

e-mail: jcabonds@jcalaw.co.za

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"DM-27"

(211)

Wednesday, April 2, 2025 at 17:35:17 South Africa Standard Time

Subject: Re: PROXIMITAS 60 INV (PTY)LTD IN BUSINESS RESCUE
Date: Friday, 28 March 2025 at 16:49:56 South Africa Standard Time
From: Paul Bester
To: Fabi-Olynn Koraan, zaint@wh.co.za, David Masterton | Business Rescue 360, Pat Pattinson | Business Rescue 360
Priority: High
Attachments: image001.png

Dear Sir

We are flabbergasted by the content of your letter and will take the matter up with the appointed rescue practitioners of Proximitas. You may visit www.pattinson.biz and familiarise yourself with the rescue process as published there.

Mr Moodley and his attorney are fully aware of the factual background that lead up to the auction. Their approach is astonishing to say the least. The writer is in Cape Town and responding mostly from memory. The position is as follow.

1. Proximitas was placed in rescue on or about 29 November 2024.
2. The eventual rescue plan as published can be found on the website referred to above. It was published on 15 October 2024.
3. The plan was adopted in terms of Chapter six of the Companies Act. All affected parties are bound thereby. The vote was 28 October.
4. The plan provides for the sale of the immovable properties in three phases. See operative clauses in the plan per 4.6
5. Mr Moodley made an offer but could not raise the funds and sought an extension.
6. On 15 November 2024 an extension was granted
7. On 3 December 2024 another extension was sought and granted.
8. During January 2025 when the practitioners commenced with the auction Mr Moodley inserted a clause that he could still purchase the immovable property up to five days before the actual auction.
9. He could not and has still not raised the funds.
10. On 6 February he started through his attorney to threaten an interdict should the auction proceed on 26 February 2025
11. On the morning of 25 February 2025 Mr Moodley purportedly acting on behalf of Proximitas launched urgent proceedings to stop the auction. The application was dismissed with costs on scale C.
12. The auction proceeded as planned.
13. Your client like all other buyers were offered occupation. In this respect the auction conditions do not provide for vacant occupation.
14. Due to the fact that at least four buyers were denied access an urgent application against Mr Moodley and Mr Swart was launched in the Grahamstown High Court under case no 1005/25
15. The matter was argued yesterday with judgment reserved and expected on Tuesday. We shall inform you once handed down.
16. For either Mr Van Schalkwyk or his client to aver that they were not aware of the sale is an untruth and one of the matters to be reported to the LPC. The conduct in this matter has left much to be desired.

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17. To date there has been no application to set aside the adopted rescue plan or the auction. There have been vague threats of setting aside the auction. The basis is unknown as it flows from the adopted plan.
18. The whole process is supported by ABSA Bank the largest creditor and bondholder.

As far as I know my firm was appointed to attend to the transfer. You may contact lizelle@besters.biz directly for feedback.

The writer is available on mobile should you have any queries herein.

Regards

Paul Bester

of PISO (BPO) / Liquidators / Insolvency Practitioners, members of
Insolvency Practitioners Association (IPA), SARBPA (BPO) / Insolvency
Practitioners Association (IPA), Advanced Construction Contracts (ACC),
International Trade and Arbitration (ITA)

C: 082 555 2740

T: (041) 585 2200 / (041) 585 1313

E: paul@besters.biz

50A Pickering Street, Newton Park, Port Elizabeth, 6045

P.O. Box 27157, Greenacres, 6057

(Member of SARIPA & INSOL International)



From: Fabi-Olynn Koraan <jcabonds@jcalaw.co.za>

Date: Friday, 28 March 2025 at 14:52

To: zaint@wh.co.za <zaint@wh.co.za>

Cc: Paul Bester <paul@besters.biz>

Subject: PROXIMITAS 60 INV (PTY)LTD IN BUSINESS RESCUE

JOHAN CRONJE

Attorneys/Conveyancers

25 Upper Drostdy Street, Kariega, 6230

We represent that Trustees of the Elmare Trust

1. Our clients bid on an online auction for the property situated at 10 Clarendon Avenue, Vanes Estate, Kariega.
2. Our clients bid for the purchase price of R1 966 650.00 was accepted on the 14 March 2025.
3. Since acceptance of the offer our client has been struggling to obtain access to the

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A handwritten signature in black ink, appearing to be "J. Cronje", located at the bottom right of the page.



MAKHANDA

51A Hill Street, P.O. Box 268, Makhanda 6139

GQEBERHA

106 Park Drive, Office 2B, 2nd floor, St. George's Park,
Gqeberha, 6001

Tel 046 622 7209, Fax 086 548 8709

WhatsApp 063 365 9437

E-mail TYNE KINGWILL – tyne@noltesmit.co.za

VAT no: 47 8025 8481

Our Ref: TYNE KINGWILL/PRO7/0001

Your Ref:

31 March 2025

BR360 (PTY) LTD

David Masterson: davidm@businessrescue360.co.za

Quinton Pattinson: patp@businessrescue360.co.za

Dear Sirs,

**IN RE: ACCESS TO FARMS GOOD HOPE BED & BREAKFAST, GOOD HOPE PACKHOUSE,
GROOTE SCHUUR & BEGINSEL, LAFRANETTE, MOREWAG AND WATERKLOOF**

We refer to the above matter and address this correspondence to you on the instructions of Mr. Kiran Moodley, in his capacity as the director, director of the sole shareholder and a creditor of Proximitas (Pty) Ltd ("Proximitas").

As the business rescue practitioners ("BRPs") of Proximitas, you mandated Mr. Moodley to manage, oversee and conduct the farming operations on the properties belonging to Proximitas. In execution of this mandate, and as you are aware, Mr. Moodley retained and implemented an organic farming strategy, which remains operational.

It is common cause that a significant organic crop yield is anticipated for the upcoming season and that certifiable organic produce is sold at a premium price. Any interference with the organic farming processes will impact upon the certification of the current crop and future crops. This will necessarily cause Proximitas and all affected persons significant financial harm as without organic certification the crop cannot be sold as such and a premium price will not be attainable.

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We draw your attention to your statutory obligations, including but not limited to:

- 1 As BRPs, you are duty-bound to act in the best interests of Proximitas, ensuring that its assets—including agricultural operations—are preserved and managed in a manner that does not cause harm or financial loss to the company, its creditors, or affected parties.
- 2 Any disruption of the organic farming activities and the organic certification of the crop will result in extensive and quantifiable damages, including loss of projected revenue and reputational harm.
- 3 Should any individuals gain access to the orchards or farming infrastructure in a manner that does not comply with organic certification requirements, disrupt ongoing operations, or conduct farming operations on the land in contravention of the requirements for organic certification, such actions would be contrary to the best interests of Proximitas and all affected parties and would constitute unlawful interference with the company's business undertakings.

We formally place on record that any act or omission resulting in financial or operational harm to Proximitas, including unauthorised access to the farms, interference with organic farming activities, or disruption of agricultural yield, shall be regarded as a breach of your statutory duties under the Companies Act. In such an event, we reserve all rights, including the right to pursue damages against you in your personal capacities should your conduct prejudice Proximitas and affected parties and to approach court for appropriate interdictory relief.

We trust that you will give urgent consideration to the above and take the necessary steps to safeguard Proximitas' assets in compliance with your statutory obligations.

Kindly confirm in writing that no unauthorised access to the properties will be permitted and that the organic farming processes will be protected in the best interests of the company and affected parties.

Yours faithfully


NOLTE SMIT INC.

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"DM-29"

(215)

Besters

ATTORNEYS

Your Ref: Tyne Kingwill/PRO7/0001

Our Ref: P Bester/Debbie

31 March 2025

NOLTE SMIT ATTORNEYS

Dear Sir

**re: ACCESS TO FARMS GOOD HOPE B&B, GOOD HOPE PACKHOUSE,
GROOTE SCHUUR & BEGINSEL, LAFRANETTE, MOREWAG &
WATERKLOOF**

Your letter dated the 31st of March 2025 addressed to Messrs Masterton and Pattinson was referred to our firm for the necessary attention and reply. You are well aware of the fact that we are on record on behalf of clients and request that you include the writer hereof in all future correspondence with our clients.

At the insistence of our clients we demand that you provide us with a power of attorney authorizing you to act on behalf of Mr Moodley as Mr Tiaan van Schalkwyk was previously his attorney of record, withdrew in the matter where you acted as correspondent, your firm thereafter came on record, thereafter Mr van Schalkwyk addressed further letters to the BRP's on Friday, 28 March 2025 and now again from you. Who is the attorney with a mandate?

Our instructions are that the BRP's deny vehemently that they mandated Mr Moodley to manage, oversee and conduct the farming operations on the properties which belong to Proximitas. Mr Moodley is very well aware of the fact that a business rescue plan was adopted and stands to be implemented. In this respect, we advise as follow:

1. During or about July 2024 Mr Moodley came on board in the rescue process as an "angel" investor promising to invest sums in excess of R150 million in the rescue proceedings
2. Mr Moodley put together a team whom drafted a business rescue plan which was rejected outright by the creditors with instructions to amend the plan
3. Mr Moodley and his entire team was once again involved in the drafting, settling and publication of a plan which was adopted on the 28th of October 2024. The plan provided for Mr Moodley as a phase 1 investor to acquire all the properties and if he could not do so within 10 days, other buyers for the properties would be sold. In the event of Mr Moodley and/or any other purchaser being unable to acquire the farms, it would be put in public auction
4. From the outset and since October 2024 the plan entailed a wind-down of the office of Proximitas
5. On the 15th of November 2024 a creditors meeting was held with the sole purpose of granting Mr Moodley further extension of time to raise the funds

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6. By the 3rd of December 2024 he was unable to do so and sought a further postponement which was approved by the creditors on condition that the failure of Mr Moodley to obtain funding will result in the auction of the farms by no later than 14 February 2025
7. In early January 2025 Mr Moodley was still unable to raise the funds and the auctioneers were instructed to proceed with the auction. In order to assist Mr Moodley a clause in the auction conditions and instructions to the auctioneers was included that should he raise the necessary funds up to 5 days prior to the auction, the auction would be cancelled and Mr Moodley would purchase all the farms.
8. The offer of Mr Moodley relating to the Proximitas farms was R90 million
9. On the 17th of January 2025 the conditions of the auction was emailed to Mr Moodley
10. On the 20th of January 2025 the amended auction conditions were transmitted to Mr Moodley by email
11. Mr Moodley confirmed that he was aware of the auction and Whatsappped Mr Pattinson with the advertisements relating thereto.
12. On the 6th of February 2025 Mr Tiaan van Schalkwyk purportedly acting on behalf of the Blackie Swart Family Trust and Proximitas, threatened with an urgent application to stay the auction.
13. Some 19 days later your firm, acting on behalf of the Applicants as correspondents, issued an urgent application granting the BRP's 6 hours to get to court and oppose the application
14. Your firm, being the attorneys of record, are aware of the fact that this application was dismissed with costs on Scale C
15. In the premises the auction proceeded the following day
16. After the auction, Mr Moodley and Mrs Swart for whom you now act in case number 1005/2025 prevented the purchasers from taking occupation and control of the farms, which you as attorney of record should know all the facts are contained in the application before court and for which judgment was reserved for tomorrow

Your Mr Moodley is well aware that there are simply no funds to continue trading. The water and electricity on some of the Proximitas farms are and will be terminated shortly and in any event, in respect of the other farms which Mr Moodley, through his company Blue Crane Organics, repurchased from Kaap-Agri, the same situation applies. There is no prospect of any crops being harvested this year. With what funds can Proximitas continue trading? It is patently clear that continued farming post February 2025 was never anticipated.

In the end, having read the papers in the matter where you act, you should be aware of the fact that the business rescue practitioners are simply executing and implementing the adopted business rescue plan. The plan as adopted is binding on all affected persons and we humbly suggest you familiarize yourself with the provisions of Section 154 of Act 71 of 2008 as well as the general provisions relating to the powers of the appointed BRP's.

Yours faithfully

BESTERS

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[Signature]

'DM-30''

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Tuesday, March 4, 2025 at 13:12:56 South Africa Standard Time

Subject: RE: Betaling
Date: Friday, 20 September 2024 at 12:04:56 South Africa Standard Time
From: Marika Swart
To: 'Robert Berrington | SAFRESCO', Pat Pattinson | Business Rescue 360
CC: 'Jeandre Meyer | SAFRESCO', johannesdl@srvalley.co.za, 'Juan Greyvenstein | SAFRESCO'
Attachments: Image001.jpg, Image002.jpg, image003.jpg, image004.jpg, image005.jpg, Image006.png

Hi Robert

I was under the impression it was for BSFT waste fruit, if not it must be paid to the account nominated by Pat.

Regards

Marika

From: Robert Berrington | SAFRESCO [mailto:rberrington@safrescoglobal.com]
Sent: Friday, 20 September 2024 11:06
To: patp@businessrescue360.co.za
CC: marika@srvalley.co.za; Jeandre Meyer | SAFRESCO <jemeyer@safrescoglobal.com>; johannesdl@srvalley.co.za; Juan Greyvenstein | SAFRESCO <jgreyvenstein@safrescoglobal.com>
Subject: FW: Betaling

Hi Pat

It is my understanding that Proximitas Investments is still in business rescue.

We are planning to make a payment today and would like to confirm in writing that we should pay the below bank details as requested?

Thank you very much

Rob

Robert Berrington

Head of Finance

SAFRESCO

☎ +27 71 194 2701

✉ rberrington@safrescoglobal.com

🌐 www.safrescoglobal.com

📍 Ground 1, B Block, Walmer Park Office Suites, 16th Avenue Walmer, 6001, Port Elizabeth, South Africa

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From: Marika Swart <marika@srvalley.co.za>
Sent: Friday, 20 September 2024 09:33
To: Jeandre Meyer | SAFRESCO <jemeyer@safrescoglobal.com>
Subject: Betaling

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Hi Jeandre

Kan ek asb aanvra dat jul die betaling maak in die volgende bank rekening asb

Bank: ABSA
Account name: SM Holdings Pty Ltd
Account number: 4094716051
Branch code: 632005
Account type: CHQ

Dankie baie



Thursday, April 10, 2025 at 2:43:38 PM South Africa Standard Time

Subject: Fw: Freshgro // Veganis: Final payment
Date: Friday, 28 March 2025 at 18:09:08 South Africa Standard Time
From: Danie Stander
To: David Masterton | Business Rescue 360, Pat Pattinson | Business Rescue 360, Dominique, Hanli Stander, Juanita Claassen | Nolande Port Elizabeth
Attachments: image002.png, image007.jpg, image008.png, image009.png, image010.png, image011.jpg

Evening David, Pat.

Trust you are well....

I forwarded you an email we received earlier wrt the outstanding Veganis payment

Mr Moodley instructed Pieter, and Veganis not to make any payments due to Freshgro... as per email below.

I do not foresee that any payment will be forthcoming soon.

We await further instructions from yourself how to deal with this matter going forward.

Thank you

Danie

Sent from Outlook for iOS

From: Hendré Conradie <hendre@rossouws.com>
Sent: Friday, March 28, 2025 4:04 PM
To: rsmith@symok.co.za <rsmith@symok.co.za>; m.pilsel@veganis.at <m.pilsel@veganis.at>; accounting@veganis.at <accounting@veganis.at>; pieter@fruitprint.eu <pieter@fruitprint.eu>; 'Water Kloof' <waterkloof15@gmail.com>; dgouws@tvsattorneys.co.za <dgouws@tvsattorneys.co.za>; marika@srvalley.co.za <marika@srvalley.co.za>; Danie Stander <danie@freshgro.co.za>; Dominique <blikkies@freshgro.co.za>
Cc: Annemie Botha <annemie@rossouws.com>; Chavonnes Cooper <supercooper@cktrust.co.za>; Gavin <gavin@cktrust.co.za>
Subject: RE: Freshgro // Veganis: Final payment

Dear Sir/Madam

We act on behalf of the Trustees of the Insolvent Estate of the Blackie Swart Family Trust ("the insolvent trust") and refer to Mr. Moodley's email of 27 March to Mr. Smith regarding payments due from various entities.

Our clients are currently investigating the transactions concerning the supply and sale of fruit, either directly or with the assistance of Freshgro Citrus Growers (Pty) Ltd ("Freshgro"). There appears to be a strong possibility that the fruit, or a substantial portion thereof, was grown and supplied by the insolvent trust; alternatively, that the insolvent trust is entitled to receive payment for the fruit and not Proximitas Investments 60 (Pty) Ltd ("Proximitas") and/or its related companies.

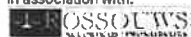
Under these circumstances, purchasers of the fruit are requested not to make payments to Freshgro, Proximitas, or any other entity until it has been determined which entity is entitled to receive payment. Alternatively, payments can be deposited into our trust account (details of which can be obtained upon request), where they will be held until the dispute regarding the entitlement to payment has been resolved.

It is essential to note that if it appears that the Insolvent Trust is entitled to the payments, or part thereof, debtors will, after receipt of this communication, remain liable for payment of such amounts as the Insolvent Trust may be entitled to.

Our clients are currently unable to respond to the other remarks in Mr. Moodley's aforementioned email, and our client's rights in this regard are reserved.

Yours faithfully,

Hendré Conradie
HENDRE CONRADIE INC.
2020/881854/21
Friday, 28 March 2025 (15:35)
Telephone number: (051) 506 2551
In association with:



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IMPORTANT WARNING OF GREAT IMPORTANCE TO YOU: Criminal syndicates may attempt to induce you to make payments to us into bank accounts that do not belong to us. This form of fraud may be perpetrated through emails, letters, electronic or other correspondences that may appear to have emanated from us, by changing the contents of pdf documents, by hacking your email account and by many other means.

Before making any payment to us, you must verify that the account into which payment will be made is our legitimate bank account and you are therefore required to contact us by telephone to confirm the correctness of our banking details before any payment is made to us. Remember that hackers and criminals are able to change our telephone number on documents or in emails and you must therefore ensure that when you contact us by telephone to confirm our banking details, that you are using our correct telephone number, e.g. by searching our telephone number on the internet.

From: Kiran@doregos.co.za <kiran@doregos.co.za>
Sent: Thursday, 27 March 2025 08:20
To: Ruwayne Smith <rsmith@symok.co.za>
Cc: 'Marika Swart' <marika@srvalley.co.za>; m.pilsel@veganis.at; accounting@veganis.at; pieter@fruitprint.eu; 'Water Kloof' <waterkloof15@gmail.com>; dgouws@tvsattorneys.co.za
Subject: FW: Freshgro // Veganis: Final payment

Hi Ruwayne,

I trust you are well.

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Further to our recent discussions, I would like to formally raise a concern regarding a payment dispute involving Veganis. Our staff have not received their salaries, and the outstanding payment from Veganis relates specifically to trust fruit. As such, this payment cannot be made to Freshgro, as they have no agreement in place to sell or market trust fruit.

Attached are the relevant documents for your reference:

The supporting spreadsheet

Veganis' statement

The Freshgro agreement

Until this dispute is resolved, Freshgro has no basis to demand the payment, and Veganis should not be placed at risk due to the mismanagement of these funds.

27 MARCH 2025

As a Director of Proximitas, I am particularly concerned about the lack of transparency with our client on this matter. For this reason, I have included the client in this correspondence to ensure that my concerns are formally noted.

Kind regards

Kiran Moodley

From: Danie Stander <danie@freshgro.co.za>

Sent: Thursday, 27 March 2025 07:51

To: Pieter de Keijzer I Fruitprint <pieter@fruitprint.eu>; Dominique <dkkies@freshgro.co.za>; Michael Pitsel <m.pitsel@veganis.at>; Melanie Eichinger <accounting@veganis.at>

Cc: Juanita Claassen I Nolands Port Elizabeth <juanitac@nolandspa.co.za>; David Masterton I Business Rescue 360

<Davidm@businessrescue360.co.za>; Pat Pattinson I Business Rescue 360 <Patp@businessrescue360.co.za>; kiran@doregos.co.za

Subject: RE: Freshgro // Veganis: Final payment

Good Morning Pieter
I trust this mail finds you well...

Just a friendly Reminder, of commitment made below, to settle and close-out Veganis '24 season tomorrow – 28 March 25.

Thanks in advance
Danie Stander

Vriendelike Groete/Kind Regards,



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From: Pieter de Keijzer I Fruitprint <pieter@fruitprint.eu>

Sent: Monday, 17 March 2025 15:53

To: Danie Stander <danie@freshgro.co.za>; Dominique <dkkies@freshgro.co.za>; Michael Pitsel <m.pitsel@veganis.at>; Melanie Eichinger <accounting@veganis.at>

Cc: Juanita Claassen I Nolands Port Elizabeth <juanitac@nolandspa.co.za>; David Masterton I Business Rescue 360

<Davidm@businessrescue360.co.za>; Pat Pattinson I Business Rescue 360 <Patp@businessrescue360.co.za>; kiran@doregos.co.za

Subject: RE: Freshgro // Veganis: Final payment

Good afternoon Danie,

All good and hope the same for you and the colleagues.

"DM-32" (22)

03rd December 2024 - Proximitas - BR - Meeting to further discuss phase 1 offer-20241203 125020-Meeting Recording

Attendees:

Pat Pattinson | Business Rescue 360

David Masterton

Kiran Moodley (joined late)

Mucharambeyi Nhawu (External)

Njabulo Kubheka Kubheka (ZA)

Tiaan Labuschagne (External)

Louis Greeff (External)

Colin Botha (ZA)

Hesli Teubes (External)

Bianca Johnston (External)

Gerrit Gouws (ZA)

Fanie Strydom (External)

Marius (Unverified)

Gretha Schoeman (External)

Cindy Jonker (External)

Paul Bester (External)

Speaker (Jaco) - Okay. There you go.

Speaker (Pat Pattinson) - Good afternoon, everyone. Jaco, is everyone in?

Speaker (Jaco) - Yes. It looks like it.

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[Signature]

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Speaker (Pat Pattinson) - Okay. Perfect. Sorry about that. Ladies and gentlemen, welcome to this meeting on the December 3 for Proximitas Investment.

The purpose of the meeting is a very simple one. I also see that we, again, are not a very big group, so no one has been forced muted. You are welcome to take part in the conversation, as and when you feel necessary. Just please unmute yourself and then, also just raise your hands first. Sorry. Raise the hands first just so I can have it in order if you don't mind. Right, gentlemen, so the meeting is going to be very quick. We are really going to discuss where we are on the process of Proximitas. As you are all aware, we have an adopted business rescue plan. That adopted business rescue plan provided for three phases, for the business rescue practitioners to entertain.

The first phase was for the practitioners to receive an offer from an investor to purchase the immovable assets of the company as a whole and then to continue trading the company as a whole, in other words, as a going concern. The reason for phase one was to save as many jobs as possible and to have as big a continuity of the business as possible going into the future. I'm going to stop at phase one. Reason being is that we did receive an offer, in the allotted time frame. The offer did come with certain suspense of conditions and provisions, etcetera.

The practitioners have communicated with the investor. We have had communications with the investors' funders, and I believe that Absa Bank, might also have communicated with the respective, banker and everybody else. What we are having problems with at the moment is a timing. The investors, bankers, and everybody else have reached to a great extent all of the suspensive conditions, that are in place other than really putting the money through the bank account. That final stage is where we are.

This is the stage I believe we are in. Colin, you want to say something there? yeah. Just mute him. Alright.

And, again, if you want to add it, just please raise your hands. So, where we're sitting at the moment is with communication from the investor and from their bank, they have gone through the committee phases. The final committee is meeting or will be meeting today, to discuss the offer. They have asked us, however, just



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before this meeting, I had a request for an extension in order for them to meet finally and to provide the feedback by Friday. Legible raising a hundred and R45,000,000, I'm sure you can imagine, is not a small task.

It's not something that I anticipated would have been done in the short time frame, if it wasn't for the urgency of this respective matter. So, in short, all of what I've said now is really just a prelude to a request from the creditors to provide another extension on finalizing the process. I'm well aware that we made it clear that no further extensions will be provided. And one of the few reasons, as a practitioner, I'm willing to entertain this additional extension is because of the time of the year where we are now. As per the adopted business rescue plan, a date has been set for the auction to take place should the finances from the investor not materialize.

The extension I'm asking for today will not delay that date of the auction. We will not be postponing that date. The date remains the same. Ladies and gentlemen, what will happen is we will simply give the investor more time to communicate with the bank, in order to get us the guarantees that we need. Handing over to the auctioneers is something that is really pointless at this point in time.

The marketing presentation and distribution of the information with regards to the farms that will go in auction will fall on deaf ears this late in the year. The plan has always been that should failing the investment happen, we would, slow down the processes on the farms. We would reduce the farming activities to that of a caretaker. We would not push the farms for production. We would not spend money on the farms other than, securing the assets and keeping the trees and everything in a healthy situation.

We would not be spending money other than what we're going to be spending in any case, during the next couple of days. So, in my mind, I do not believe that the creditors, the farms, or the investors will be any worse off if we were to convert to the Wind down and start promoting the assets for sale today or if we allow another five days for the investor to get everything in order. so in short, that is my song for today. If at all possible, I'm just going to give two or three minutes for everybody just to come back with questions, answers, and everything else. I am going to try and get the investor online.

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I see he's trying to phone me so that he could potentially also address, the creditors. Ladies and gentlemen, is it okay if I have that two minute to quickly speak to him? Just show of hands. Thumbs up, thumbs down. Perfect.

I see some thumbs up, so just excuse me for one minute quickly, please. Thank you.

Apologies, and thanks for that, Ladies and gentlemen. I have spoken to the investor. He is joining the meeting.

If we can give him a minute. But in the meantime, are there any comments or questions that I can address along? Any questions at all? Claire.

Speaker (Rob Parker) - Hi, Pat.

It's Rob Parker off my secretary's computer. Just remind me, when is this scheduled auction date?

Speaker (Pat Pattinson) – Second week of February.

Speaker (Rob Parker) - Okay. Now shouldn't be this time of the year, silly season, instead of giving a five-day extension, shouldn't you be giving and shouldn't we just be extending this thing till early January?

Speaker (Pat Pattinson) - Rob, yes. You are right. But at the same time, we need to push to get the investors funds into the bank account. He's also hungry to get it done in order for him to start working on the farms. So, yes, it could be this this as I said, it's immaterial. There's going to be no real difference, but from our side and remember, they are especially considering Absa Bank interest and everything keeps, packing on.

Speaker (Rob Parker) - I'm happy. I'm happy. Leave it then at Friday. I'm happy. Perfect.

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Speaker (Pat Pattinson) - Thanks, Rob. Stefan, I saw your hand.

Speaker (Stefan) - Yeah. Just a side question.

Speaker (Pat Pattinson) - Yes, sir.

Speaker (Stefan) - And I'm playing devil's advocate. What happens if the deal doesn't go through and the money invested by the investor? How are you going to deal with that money? I'm not sure whether that is considered to be PCF, and how is that going to be repaid if anything? I don't I can't recall the plan, addressing that issue, and, really, it's just playing devil's advocate.

I'm not saying that that's going to happen. In my mind, I just want to clarify because, we want to make it very clear. If there's a situation where the funding doesn't come through and we're going to wind down, the money that is put in by the investor is certainly not going to be recovered from the security held by Absa. So, for that reason, I'm just raising the, the question.

Speaker (Pat Pattinson) - No. Stefan, very, very valid point. It's something that we have debated ad nauseam on this site, some time ago. However, the conclusion was very simple. He wanted to invest the money. He asked for an extension up to a certain point of time.

He didn't make the timelines. So, our concession to provide them more timelines is at his risk. We have not approved any post commencement finance. We have not approved any spending on the farms. The funds that have to date been spent is as we have always said from the income from the previous year's harvest, we've got sufficient funds to run the company up to about the end of January, and we would have to cut down a little bit in order to facilitate the auction into February.

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But, no, he will not be receiving any funds back, not as a concurrent creditor, not as post commencement finance. Nothing.

Speaker (Stefan) - Thank you, Pat

Speaker (Pat Pattinson) - Perfect. I see that Kiran is on the farms, and he's not able to dial in.

He's on the phone. I'm going to see and put him on speaker phone, and see if you guys can hear him that way, if permitted. Just give me a sec while I try and get Kieran on the speaker phone, please. Ladies and gentlemen, sorry. I've been speaking to you and to Kieran.

I forgot I muted myself. Kiran, you are on with the rest of the creditors. If you can just, please give them quick feedback as to where you are in the process and the reason for the additional extension, please.

Speaker (Mr.Moodley) - Hi, Creditors. Sorry. I'm unable to get onto Teams. I'm not sure. The link doesn't seem to want to work. But, nonetheless, I'm on the farm as we speak, so my signal is a bit low. If you can't hear me Pat, if you could please just relay what I am saying.

So Standard Bank at the moment has got to follow their own process, and it's gone to their committee today, and they're having their discussions. However, I'm at the mercy of the, current procedure, and they are busy with it, and they are basically looking at the transaction. They require a further five days just to complete the transaction on their side to ensure that all their boxes are ticked and their, t's are crossed and their i's are dotted.

Speaker (Pat Pattinson) - Perfect. Thanks, Kieran. Then a question that did come up from Absa Bank was with regard to the funds that you are currently putting into

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the business. Just for transparency and openness as well, I want to give the same answer I gave the creditors while you can hear us as well. I informed the creditors that the funds that are currently been spent on the farms from the proceeds of last year's harvest, Any funds that you are putting into the business at the moment is at your own risk. There are no post commencement finance and no commitment from the practitioners to refund any of those additional expenses.

Speaker (Mr.Moodley) - That is correct.

Speaker (Pat Pattinson) - That's Perfect. Ladies and gentlemen, as you heard there from Kieran, there's no commitment to pay any further funds back. Any other questions, ladies and gentlemen? Anything at all before we go over to the vote?

Alright, so as per normal I'm going to share the voting screen, please bear with me. Can everybody see the excel sheet? Just thumbs up, please. Colin, did you raise your hand for a question? Sorry Claire. Rob.

Speaker (Rob Parker) - It's Rob Parker again. Just something that you said there, Pat. The proceeds from last year's harvest, what are those funds being used for at the moment?

Are they being held by you?

Speaker (Pat Pattinson) - They are not being held by us, but we are still in control of the bank accounts. And when we need to incur cost for the Proxima's farm, such as salaries and everything else, we do take it from those funds. We are we have not started with the fertilizing. We've not started with the spraying, which are the greater cost.

And the simple reason for that is it will be completely and utterly pointless to incur those costs unless, we are going to be selling the farms as organic farms into the future. And that's a risk that we're sitting with at the moment, Rob.

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Speaker (Rob Parker) - Yeah. Alright. So, basically, to answer them to you're just paying the bare minimum expenditure to just to keep it ticking over at the moment out of the crop proceeds. Correct?

Speaker (Pat Pattinson) - 100%. Yeah. We cannot incur any cost for farms that we might not own and operate next year. That would be reckless.

Speaker (Rob Parker) - Thanks, Pat.

Speaker (Pat Pattinson) - Perfect. Thanks, Rob. Anything else before we go to the votes, ladies and gentlemen? Anything at all?

Speaker (Stefan) - Can I just confirm?

Speaker (Pat Pattinson) - Stefan. Yes, sir.

Speaker (Stefan) - You mentioned next Friday. From Absa's side, we would suggest Wednesday next week. That's more or less five days. We don't have a mandate any longer than, next Wednesday. So, if there's a vote, we would suggest that, that it be postponed till next week, Wednesday.

Speaker (Pat Pattinson) - Perfect. Stefan, that would have been my request for the five days as well.

Let me just go over to the vote. Now I didn't have the date there. I'll quickly check the date just so we can confirm it on the record and while we've got the recording running. Next week, Wednesday, will then be the eleventh. We are going to ask

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for the postponement until the December 11, which is five working days from today.

Like I said, when we vote, we are voting for an extension until the December 11. As per the normal process, unless I've got any other questions, just a final gap for anybody that might have a comment or a question. Perfect. I am just going to ask who's present. Colin Steffen, I know Absa Bank is here.

I'm going to mark you present for all of your votes. Then I'm going to ask Baytrac. Is there anybody present for Baytrac? Eskom. Do we have anybody from Eskom here?

I think I did see someone.

Speaker (Gertha) - Yes. I'm here. Gretha.

Speaker (Pat Pattinson) - Good afternoon, Gretha.

Thank you. SARS, do we have a SARS representative? Not today. Strydom and Partners, I think I did see someone there. No one from Strydom and Partners.

Christelle, you're not from Strydom? Okay. Humansdorp. Sorry. Sorry to put you on the spot.

Just want to make sure we don't miss you.

Speaker (Christelle) - No. Sorry. It does. I don't want to unmute.

Speaker (Pat Pattinson) - Okay. Sunday's River Water Use Association. Anybody from the Water Board? Anybody from the Humans Dorp Co-op?

Rob representing mister Willie?

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Speaker (Rob Parker) - Yes.

Speaker (Pat Pattinson) - Anybody from Kaap Agri?

Speaker (Ivan Newberg) - Good day. Yes. Ivan Newberg from Cremes Stains Attorneys.

I'm on behalf of Tianna Baskakhli.

Speaker (Pat Pattinson) - Thank you, sir. I'm going to mark you yes for both of the Wooley's Trust votes. Sundays River Valley Municipality. Anybody from the municipality?

Speaker (Pat Pattinson) - Perfect. Let me check, are there anybody here that I didn't call for that believe they've got a vote? Perfect. If we can then go over to the vote, Absa Bank, alphabetically, you are first, Against or for the extension, please? Absa?

Speaker (Stefan) - Colin can confirm, but it's, in favor, Pat.

Speaker (Pat Pattinson) - Perfect. Colin?

Speaker (Colin) - Good. Yes.

Speaker (Pat Pattinson) - Thank you. I'm going to mark it for all of your votes again. Perfect. Thank you very much. Eskom for or against the postponement?



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Speaker (Gretha) - Yes. For it.

Speaker (Pat Pattinson) - Thank you very much. I have got Strydom and Partners. **Speaker (Christelle)** - Yes. That's fine.

Speaker (Pat Pattinson) - Thank you very much. Rob?

Speaker (Rob Parker) - Yes.

Speaker (Pat Pattinson) - Thank you very much.
Greyvensteins?

Speaker (Ivan) - Yes.

Speaker (Pat Pattinson) - Thank you, sir.

That did means we've got a unanimous vote in favor of the extension. That extension, again, just confirming, for next week, Wednesday, the eleventh of December.

I would again like to thank everybody for your patience in this matter, and, I do I honestly hope that we don't have any further extensions beyond the December 11. Any other comments or questions before I close the meeting? Perfect. Ladies and gentlemen, as always, we're going to close the formal meeting now. However, I'm going to stick around for two or three minutes in case there are any comments or questions that someone wants to make, off the record.

Thank you very much for your time. It's appreciated. Thank you.



IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, GQEBERHA)

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CASE NO:

In the matter between:

DAVID JOHN MASTERTON N.O.

First Applicant

QUINTON PATTINSON N.O.

Second Applicant

And

KIRAN MOODLEY

First Respondent

BLUE CRANE ORGANICS (PTY) LTD

Second Respondent

REG NO: 2024/578906/07

ALL AFFECTED PARTIES

Third Respondents

(PER ANNEXURE "DM-4")

CONFIRMATORY AFFIDAVIT

I, the undersigned

QUINTON PATTINSON

do hereby make oath and state that:

1.

I am an adult male Senior Business Rescue Practitioner. I practice from Building
No. 5 Waterfront Business Park, Pommern Street, Humeral, Gqeberha.



2.

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The content of this affidavit fall within my personal knowledge and are both true and correct.

3.

I have read the affidavit of David Masterton and confirm the content thereof as far as it refers to me.



QUINTON PATTINSON

SIGNED AND SWORN before me at GQEBERHA on this 23rd day of APRIL 2025, the Deponent having acknowledged that he/she knows and understands the contents of this Affidavit, which is deposed to in accordance with the regulations governing the administration of an oath as more fully set out in Government Notice R1258 of 21 July 1972, as amended by Government Notice 1648 dated 19 August 1977 and Government Notice 903 dated 10 July 1998.



COMMISSIONER OF OATHS

COMMISSIONER OF OATHS
MELANY FOUCHÉ
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Parsons Hill, Port Elizabeth, 6001
Practising Attorney RSA